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TITLE 3—THE PRESIDENT

EXECUTIVE ORDER 10147

CREATING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN THE NEW YORK CENTRAL RAILROAD COMPANY, LINES EAST OF BUFFALO, AND CERTAIN OF ITS EMPLOYEES

WHEREAS a dispute exists between the New York Central Railroad Company, Lines East of Buffalo, a carrier, and certain of its employees represented by the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors, and Brotherhood of Railroad Trainmen, labor organizations; and

WHEREAS this dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended; and

WHEREAS this dispute, in the judgment of the National Mediation Board, threatens substantially to interrupt interstate commerce to a degree such as to deprive a section of the country of essential transportation service:

NOW, THEREFORE, by virtue of the authority vested in me by section 10 of the Railway Labor Act, as amended (45 U. S. C. 160), I hereby create a board of three members, to be appointed by me, to investigate the said dispute. No member of the said board shall be pecuniarily or otherwise interested in any organization of railway employees or any carrier.

The board shall report its findings to the President with respect to the said dispute within thirty days from the date of this order.

As provided by section 10 of the Railway Labor Act, as amended, from this date and for thirty days after the board has made its report to the President, no change, except by agreement, shall be made by the New York Central Railroad Company, Lines East of Buffalo, or by its employees, in the conditions out of which the said dispute arose.

HARRY S. TRUMAN

THE WHITE HOUSE,
August 4, 1950.

[F. R. Doc. 50-6959; Filed, Aug. 4, 1950; 4:48 p. m.]

EXECUTIVE ORDER 10148

DESIGNATION OF CERTAIN OFFICERS OF THE DEPARTMENT OF COMMERCE TO ACT AS SECRETARY OF COMMERCE

By virtue of the authority vested in me by section 179 of the Revised Statutes of the United States (5 U. S. C. 6), and as President of the United States, I hereby authorize and direct (1) the Under Secretary of Commerce for Transportation to perform the duties of the Secretary of Commerce in case of the absence, sickness, resignation, or death of the Secretary of Commerce and of the Under Secretary of Commerce; (2) the Assistant Secretaries of Commerce, in the order of precedence as determined by the dates of their commissions, to perform the duties of the Secretary of Commerce in case of the absence, sickness, resignation, or death of the Secretary of Commerce, the Under Secretary of Commerce, and the Under Secretary of Commerce for Transportation; and (3) the Solicitor of Commerce to perform the duties of the Secretary of Commerce in case of the absence, sickness, resignation, or death of the Secretary of Commerce, the Under Secretary of Commerce, the Under Secretary of Commerce for Transportation, and the Assistant Secretaries of Commerce.

This order supersedes Executive Order No. 9885 of August 18, 1947, entitled "Designation of the Assistant Secretaries of Commerce and the Solicitor of Commerce to Act as Secretary of Commerce".

HARRY S. TRUMAN

THE WHITE HOUSE,
August 5, 1950.

[F. R. Doc. 50-6973; Filed, Aug. 7, 1950; 10:56 a. m.]

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 2—APPOINTMENT THROUGH THE COMPETITIVE SYSTEM

COMPETITION RESTRICTED TO VETERANS

Effective upon publication in the FEDERAL REGISTER, subparagraph (2) of

(Continued on p. 5069)

CONTENTS

THE PRESIDENT

EXECUTIVE AGENCIES

FEDERAL REGISTER

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CONTENTS—Continued

CODIFICATION GUIDE

A numerical list of the parts of the Code of Federal Regulations affected by documents published in this issue. Proposed rules, as opposed to final actions, are identified as such.

CODIFICATION GUIDE—Con.

§ 2.102 (c) is amended as set out below. As amended, paragraph (c) reads as follows:

§ 2.102 *Competition restricted to veterans* * * *

(c) (1) A position, examination for which has been restricted to veterans under paragraphs (a) or (b) of this section, may not be filled by appointment, reappointment, reinstatement, promotion, demotion, transfer, or reassignment of a non-veteran from outside the organizational entity in which the position exists, if there is a veteran in the employ of such entity in the local area who is qualified and available for promotion or reassignment to the position, or if there is a total of three or more veterans elsewhere who are qualified and available for an appointment of equal tenure.

(2) The restriction in subparagraph (1) of this paragraph shall not be applicable to the promotion, demotion, transfer, or reassignment of an employee (i) within the organizational entity or (ii) from one restricted position to another when both positions are covered by the same generic title, nor to the reinstatement (i) under the provisions of § 20.11 of this chapter of former employees of the agency to the positions from which separated by reduction in force or to positions covered by the same generic title and (ii) of former employees of the agency last separated by disability retirement.

(R. S. 1753, sec. 2, 22 Stat. 403; 5 U. S. C. 631, 633. E. O. 9830, Feb. 24, 1947, 12 F. R. 1259; 3 CFR, 1947 Supp.)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] HARRY B. MITCHELL,
Chairman.

[F. R. Doc. 50-6909; Filed, Aug. 7, 1950; 8:48 a. m.]

TITLE 7—AGRICULTURE

Chapter IX—Production and Marketing Administration (Marketing Agreements and Orders), Department of Agriculture

[Peach Order 2]

PART 940—PEACHES GROWN IN COUNTY OF MESA IN COLORADO

REGULATION BY GRADES AND SIZES

§ 940.302 *Peach Order 2*—(a) *Findings.* (1) Pursuant to the amended marketing agreement and Order No. 40, as amended (7 CFR Part 940; 15 F. R. 5001) regulating the handling of peaches grown in the County of Mesa in the State of Colorado, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended, and upon the basis of the recommendations of the Administrative Committee, established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of such peaches, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) in that, as hereinafter set forth, the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than August 9, 1950. A reasonable determination as to the supply of, and the demand for, such peaches must await the development of the crop and adequate information thereon was not available to the Administrative Committee until July 24, 1950; recommendation as to the need for, and the extent of, regulation of shipments of such peaches was made at the meeting of said committee on July 24, 1950, after consideration of all information then available relative to the supply and demand conditions for such peaches, at which time the recommendation and supporting information was submitted to the Department, and made available to growers and handlers; necessary supplemental information was not available to the Department until July 28, 1950; in order to effectuate the declared policy of the act, the regulation of peach shipments during the present fiscal year should, insofar as practicable, be applicable to all shipments of such peaches; and compliance with the provisions of this section will not require of handlers any preparation therefor which cannot be completed by the effective time hereof.

(b) *Order.* (1) During the period beginning at 12:01 a. m., m. s. t., August 9, 1950, and ending at 12:01 a. m., m. s. t., October 15, 1950, no handler shall ship:

(i) Any peaches that do not grade at least U. S. No. 2: *Provided*, That, with respect to ripe peaches, the requirements of such grade shall not include damage, other than serious damage, caused by bruises; or

(ii) Any peaches that are smaller than 2 inches in diameter: *Provided*, That any lot of peaches shall be deemed to be of a size not smaller than 2 inches in diameter (a) if not more than 10 percent, by count, of the peaches in such lot are smaller than 2 inches in diameter and if not more than 15 percent, by count, of the peaches contained in any individual container in such lot are smaller than 2 inches in diameter; or (b) if the peaches in such lot are shipped in peach boxes and the peaches are of a size not smaller than a size that will pack, in accordance with the specifications of a standard pack, a count of 78 peaches in a peach box, except that the tolerance for variations incident to proper packing; provided in such pack specifications, shall not permit a variation of more than 4 peaches in any such box.

(2) *Definitions.* As used in this section, "peaches," "handler," and "ship" shall have the same meaning as when used in the aforesaid amended marketing agreement and order; "U. S. No. 2," "diameter," "count," and "standard pack" shall have the same meaning as when used in the United States Standards for Peaches (7 CFR 51.312); and "peach box" shall mean a box of the following inside dimensions: 4½–5" x 11½" x 16⅛".

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup., 608c)

Done at Washington, D. C., this 4th day of August 1950.

[SEAL] S. R. SMITH,
Director,
Fruit and Vegetable Branch.

[F. R. Doc. 50-6961; Filed, Aug. 7, 1950; 9:58 a. m.]

TITLE 14—CIVIL AVIATION

Chapter I—Civil Aeronautics Board

PART 4a—AIRPLANE AIRWORTHINESS

Correction

In the revision of Title 14, Chapter I, published in Part II, Section 1, of the issue for Saturday, July 16, 1949, the following additional corrections have been made:

In § 4a.37 (e), on page 4076, the reference "§§ 4a.687–4a.692" should read "§ 4a.687".

In § 4a.701, on page 4094, the reference "§§ 4a.671 through 4a.692" should read "§§ 4a.671 through 4a.687".

In § 4a.724, on page 4095, the reference "§§ 4a.687–4a.692" should read § 4a.687".

TITLE 26—INTERNAL REVENUE

Chapter I—Bureau of Internal Revenue, Department of the Treasury

Subchapter C—Miscellaneous Excise Taxes

[Regs. 71; T. D. 5799]

PART 113—DOCUMENTARY STAMP TAXES

EXEMPT TRANSFERS BETWEEN CORPORATIONS AND THEIR NOMINEES; ELIMINATION OF RETURNS OF BROKERS AND DEALERS IN STOCKS AND BONDS

In order to conform Regulations 71 (1941 Edition) (26 CFR Part 113), to the provisions of section 4 of Public Law 378 (81st Cong., 1st sess.), approved October 25, 1949, and in order to eliminate the requirement of filing a monthly return on Form 838 by brokers and by dealers in stocks and bonds, such regulations are amended as follows:

PARAGRAPH 1. Immediately preceding § 113.30 there is inserted the following:

PUBLIC LAW 378 (81ST CONG., 1ST SESS.), APPROVED OCTOBER 25, 1949

SEC. 4. TRANSFERS OF STOCK BETWEEN CORPORATION AND NOMINEE.

(a) Section 1802 (b) of the Internal Revenue Code (relating to stamp taxes on sales and transfers of stock) is hereby amended by striking out the period at the end of clause (2) and inserting in lieu thereof a semicolon, and by inserting after clause (2) the following new clause:

(3) From a corporation to a registered nominee of such corporation, or from one such nominee to another such nominee, if in either case the shares or certificates continue to be held by such nominee for the same purpose for which they would be held if retained by such corporation; or from such nominee to such corporation.

(b) In the case of the death before the date of the enactment of this act of a nominee of a corporation (whether or not such nominee was registered), the tax under section 1802 (b) of the Internal Revenue Code shall not be imposed upon any delivery or transfer of stock from the executor or administrator of such nominee to such corporation if such delivery or transfer is made on or before the date of the enactment of this act or within one year after such date.

PAR. 2. Section 113.35, as amended by Treasury Decision 5613, approved April 27, 1948, is further amended as follows:

(A) By changing the designations of paragraphs (g) and (h) to (h) and (i) respectively, by substituting "(g)" for "(f)" in the first sentence of the redesignated paragraph (i), and by changing "(h)" as it occurs in paragraphs (a) to (f) inclusive to "(i)".

(B) By inserting a new paragraph (g) as follows:

(g) *Transfers between corporations and their nominees.* The tax does not apply to the delivery or transfer of stock from a corporation to a registered nominee of such corporation, or from one such nominee to another such nominee, if in either case the shares or certificates continue to be held by such nominee for the same purpose for which they would be held if retained by such corporation; or from such nominee to such corporation. No exemption is granted unless the nominee is registered in the manner provided in § 113.153.

In the case of the death before October 25, 1949, of a nominee of a corporation (whether or not such nominee was registered), the tax shall not apply to the delivery or transfer of stock from the executor or administrator of such nominee to such corporation if such delivery or transfer is made on or before October 25, 1950.

The exemption specified in this paragraph shall not be granted in any case unless the delivery or transfer is accompanied by an exemption certificate, executed by the person making the exempt transfer, in substantially the form prescribed in paragraph (i).

PAR. 3. Section 113.153 is amended by deleting the third paragraph thereof and inserting in its place the following two paragraphs:

Any corporation may appoint some person to act as nominee in holding stock on its behalf.

The name of the person appointed as nominee of a broker, custodian or corporation shall be registered with the collector for the district in which the principal office of the broker, custodian or corporation is located. Substitution of a nominee may be effected by likewise registering the name of the successor nominee.

PAR. 4. Section 113.154 is amended by deleting from the third paragraph thereof the words "broker or custodian" wherever such words appear and inserting in lieu thereof the words "broker, custodian or corporation."

PAR. 5. Sections 113.39 and 113.69 are deleted.

(Sec. 3791, I. R. C. (53 Stat. 467; 26 U. S. C. 3791))

Because the purposes of this Treasury decision are merely to conform the regulations to the provisions of section 4 of Public Law 378 (81st Congress, 1st Session), exempting from stamp tax certain deliveries and transfers of stock, and to eliminate the filing of monthly returns by brokers or dealers in stocks or bonds, it is found that it is unnecessary to issue this Treasury decision under section 4 (a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4 (c) of said act.

[SEAL] FRED S. MARTIN,
Acting Commissioner of Internal Revenue.

Approved: August 2, 1950.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

[P. R. Doc. 50-6935; Filed, Aug. 7, 1950; 8:51 a. m.]

TITLE 29—LABOR

Chapter IV—Child Labor Branch, Department of Labor

PART 450—GENERAL STATEMENT ON THE CHILD LABOR PROVISIONS OF THE FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED

GENERAL

AUTHORITY: §§ 450.0 to 450.28 issued under 52 Stat. 1060, as amended; 29 U. S. C. and Sup., 201-219.

GENERAL

§ 450.0 *Introductory statement.* This part discusses the meaning and scope of the child labor provisions of the Fair Labor Standards Act, as amended[1] (hereinafter referred to as the act). The provisions of this part seek to protect the safety, health, well-being and opportunities for schooling of youthful workers and authorize the Secretary of Labor to issue legally binding orders or regulations in certain instances and under certain conditions. The child labor provisions are found in sections 3 (l), 11 (b), 12, 13 (c) and (d), 15 (a) (4), 16 (a), and 18 of the act. They are administered and enforced by the Secretary of Labor who had delegated[2] to the Wage and Hour Division the duty of making investigations to obtain compliance, and to the Bureau of Labor Standards the duty of developing standards for the issuance of regulations and orders relating to (a) hazardous occupa-

[1] Pub. No. 718, 75th Cong., 3d sess. (52 Stat. 1060), as amended by the act of June 26, 1940 (Pub. Res. No. 88, 76th Cong., 3d sess.); by Reorganization Plan No. 2 (60 Stat. 1095), effective July 16, 1946; by the Portal-to-Portal Act of 1947, approved May 14, 1947 (61 Stat. 84); and by the Fair Labor Standards Amendments of 1949, approved October 26, 1949 (Pub. Law 393, 81st Cong., 1st sess.). Amendments provided by the Fair Labor Standards Amendments of 1949 are effective as of January 25, 1950. These amendments leave the existing law unchanged except as to provisions specifically amended and the addition of certain new provisions.

[2] General Order No. 42 issued by the Secretary on July 1, 1949.

tions, (b) employment of 14- and 15-year-old children, and (c) age certificates.

The interpretations of the Secretary contained in this part indicate the construction of the law which will guide him in performing his duties until he is directed otherwise by authoritative rulings of the courts or until he shall subsequently decide that his prior interpretation is incorrect.

§ 450.1 *General scope of statutory provisions.* The most important of the child labor provisions are contained in sections 12 (a), 12 (c), and 3 (l) of the act. Section 12 (a) provides that no producer, manufacturer, or dealer shall ship or deliver for shipment in interstate or foreign commerce any goods produced in an establishment in or about which oppressive child labor was employed within 30 days before removal of the goods. The full text of this subsection is set forth in § 450.3 and its terms are discussed in §§ 450.4 to 450.10, inclusive. Section 12 (c) prohibits any employer from employing oppressive child labor in interstate or foreign commerce or in the production of goods for such commerce. The text and discussion of this provision appear in §§ 450.11 and 450.12. Section 3 (l) of the act, which defines the term "oppressive child labor," is set forth in § 450.16 and its provisions are discussed in §§ 450.17 to 450.20, inclusive. It will further be noted that the act provides various specific exemptions from the foregoing provisions which are set forth and discussed in §§ 450.21 to 450.25, inclusive.

§ 450.2 *Comparison with wage and hours provisions.* A comparison of the child labor provisions with the so-called wage and hours provisions contained in the act discloses some important distinctions which should be mentioned.

(a) The child labor provisions contain no requirements in regard to wages. The wage and hours provisions, on the other hand, provide for minimum rates of pay for straight time and overtime pay at a rate not less than one and one-half times the regular rate of pay for overtime hours worked. Except as provided in certain exemptions contained in the act, these rates are required to be paid all employees subject to the wage and hours provisions, regardless of their age or sex. The fact, therefore, that the employment of a particular child is prohibited by the child labor provisions or that certain shipments or deliveries may be proscribed on account of such employment, does not relieve the employer of the duties imposed by the wage and hours provisions to compensate the child in accordance with those requirements.

(b) There are important differences between the child labor provisions and the wage and hours provisions with respect to their general coverage. As pointed out in § 450.13, two separate and basically different coverage provisions are contained in section 12 relating to child labor. One of these provisions (section 12 (c)), which applies to the employment by an employer of oppressive child labor in commerce or in the production of goods for commerce, is similar to the wage and hours coverage provisions, which include employees engaged in commerce or in the production of goods for commerce. The other provision (section 12 (a)), however, differs fundamentally in its basic concepts of coverage from the wage and hours provisions, as will be explained in §§ 450.3 to 450.10.

(c) Another distinction is that the exemptions provided by the act from the minimum wage and/or overtime provisions are more numerous and differ from the exemptions granted from the child labor provisions. There are only four specific child labor exemptions of which only one applies to the minimum wage and overtime pay requirements as well. This is the exemption for employees engaged in the delivery of newspapers to the consumer.[3] With this exception, none of the specific exemptions from the minimum wage and/or overtime pay requirements applies to the child labor provisions. However, it should be noted that the exclusion of certain employers by section 3 (d)[4] of the act applies to the child labor provisions as well as the wage and hours provisions.

COVERAGE OF SECTION 12 (A)

§ 450.3 *General.* Section 12 (a) of the act provides as follows:

No producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods therefrom any oppressive child labor has been employed: *Provided*, That any such shipment or delivery for shipment of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer, manufacturer, or dealer that the goods were produced in compliance with the requirements of this section, and who acquired such goods for value without notice of any such violation, shall not be deemed prohibited by this subsection: *And provided further*, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any goods under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such goods before the beginning of said prosecution.

In determining the applicability of this provision, consideration of the meaning of the terms used is necessary. These terms are discussed in §§ 450.4 to 450.10, inclusive.

§ 450.4 *"Producer, manufacturer, or dealer".* It will be observed that the prohibition of section 12 (a) with respect to certain shipments or deliveries for shipment is confined to those made by producers, manufacturers, and dealers. The terms "producer, manufacturer, or dealer" used in this provision are not expressly defined by the statute. However, in view of the definition of "produced" in section 3 (j), for purposes of this subsection a "producer" is considered to be one who engages in producing, manufacturing, handling or in any other manner working on goods in any State.[5] Since manufacturing is considered a specialized form of production, the word "manufacturer" does not have as broad an application as the word "producer." Manufacturing generally involves the transformation of raw materials or semifinished goods into new or different articles. A person may be considered a "manufacturer" even though his goods are made by hand, as is often true of products made by homeworkers. Moreover, it is immaterial whether manufacturing is his sole or main business. Thus, the term includes retailers who, in addition to retail selling, engage in such manufacturing activities as the making of slip-covers or curtains, the baking of bread, the making of candy, or the making of window frames. The word "dealer" refers to anyone who deals in goods (as defined in section 3 (i) of the act),[6] including persons engaged in buying, selling, trading, distributing, delivering, etc. It includes middlemen, factors, brokers, commission merchants, wholesalers, retailers and the like.

§ 450.5 *"Ship or deliver for shipment in commerce."* (a) Section 12 (a) forbids producers, manufacturers, and dealers to "ship or deliver from shipment in commerce" the goods referred to therein. A producer, manufacturer, or dealer may "ship" goods in commerce either by moving them himself in interstate or foreign commerce or by causing them to so move, as by delivery to a carrier.[7] Thus, a baker "ships" his bread in commerce whether he carries it in his own truck across State lines or sends it by contract or common carrier to his customers in other States. The word "ship" must be applied in its ordinary meaning. For example, it does not apply to the transmission of telegraphic messages.[8]

(b) To "deliver for shipment in commerce" means to surrender the custody of goods to another under such circumstances that the person surrendering the goods knows or has reason to believe that the goods will later be shipped in commerce.[9] Typical is the case of a

[3] Section 13 (d) of the act.

[4] Section 3 (d) defines "employer" to include "any person acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or any State or political subdivision of a State, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization."

[5] For a discussion of the definition of "produced" as it relates to section 12 (a), see § 450.7.

[6] See § 450.6.

[7] Section 3 (b) of the act defines "commerce" to mean "trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof."

[8] Western Union Telegraph Co. v. Lenroot, 323 U. S. 490.

[9] Tobin v. Grant, N. D. Calif., 79 F. Sup. 975 which was a suit for injunction by the Secretary of Labor against a manufacturer of books and book covers employing oppressive child labor. The facts showed that the manufactured articles sold by defendant to purchasers in the same State had an ultimate out-of-State destination which was manifest to defendant. The court construed the words "deliver for shipment in commerce" as sufficiently broad to cover this situation even though the purchasers acquired title to the goods.

Detroit manufacturer who delivers his goods in Detroit to a distributor who, as the manufacturer is well aware, will ship the goods into another State. A delivery for shipment in commerce may also be made where raw materials are delivered by their producer to a manufacturer in the same State who converts them into new products which are later shipped across State lines. If the producer in such case is aware or has reason to believe that the finished products will ultimately be sent into another State, his delivery of the raw materials to the manufacturer is a delivery for shipment in commerce. Another example is a paper box manufacturer who ships a carton of boxes to a fresh fruit or vegetable packing shed within the same State, with knowledge or reason to believe that the boxes will there be filled with fruits or vegetables and shipped outside the State. In such case the box manufacturer has delivered the boxes for shipment in commerce.

§ 450.6 *"Goods".*[14] Section 12 (a) prohibits the shipment or delivery for shipment in commerce of "any goods" produced in an establishment which were removed within 30 days of the employment there of oppressive child labor. It should be noted that the statute does not base the prohibition of section 12 (a) upon the percentage of an establishment's output which is shipped in commerce.

The act furnishes its own definition of "goods" in section 3 (i), as follows:

> "Goods" means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

The term includes such things as foodstuffs, clothing, machinery, printed materials, blueprints and also includes intangibles such as news, ideas, and intelligence. The statute expressly excludes goods after their delivery into the actual physical possession of an ultimate consumer other than a producer, manufacturer, or processor thereof. Accordingly, such a consumer may lawfully ship articles in his possession although they were ineligible for shipment (commonly called "hot goods") before he received them.[15]

§ 450.7 *"Produced".* The word "produced" as used in the act is defined by section 3 (j) to mean:

> * * * produced, manufactured, mined, handled, or in any other manner worked on in any State; * * *[16]

[14] The term "goods" is discussed in more detail in Part 776 (Interpretative Bulletin on the coverage of the wage and hours provisions) issued by the Administrator of the Wage and Hour Division.

[15] For a discussion of the exclusionary clause in section 3 (i) of the act, see Powell et al. v. United States Cartridge Co., 70 S. Ct. 755.

[16] The remaining portion of section 3 (j) provides: "* * * and for the purposes of this act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State."

(a) The prohibition of section 12 (a) cannot apply to a shipment of goods unless those goods (including any part or ingredient thereof) were actually "produced" in and removed from an establishment where oppressive child labor was employed. This provision is applicable even though the under-age employee does not engage in the production of the goods themselves if somewhere in the establishment in or about which he is employed goods are "produced" which are subsequently shipped or delivered for shipment in commerce. In contrast to this restrictive requirement of section 12 (a), it will be noted that the employees covered under the wage and hours provisions as engaged in the production of goods for commerce are not limited to those in or about establishments where such goods are being produced. If the requisite relationship[17] to production of such goods is present, an employee is covered for wage and hours purposes regardless of whether his work brings him in or near any establishment where the goods are produced.[18]

(b) Since the first word in the definition of "produced" repeats the term being defined, it seems clear that the first word must carry the meaning that it has in everyday language. Goods are commonly spoken of as "produced" if they have been brought into being as a result of the application of work. The words "manufactured" and "mined" in the definition refer to special forms of production. The former term is generally applied to the products of industry where existing raw materials are transformed into new or different articles by the use of industrial methods, either by the aid of machinery or by manual operations. Mining is a type of productive activity involving the taking of materials from the ground, such as coal from a coal mine, oil from oil wells, or stone from quarries. The statute also defines the term "produced" to mean "handled" or "in any other manner worked on."[19] These words relate not only to operations carried on in the course of manufacturing, mining, or production as commonly described, but include as well all kinds of operations which prepare goods for their entry into the stream of commerce, without regard to whether the goods are to be further processed or are so called "finished goods."[20] Accordingly, warehouses, fruit and vegetable packing sheds, distribution yards, grain elevators, etc., where goods are sorted, graded, stored, packed, labeled or otherwise handled or worked on in preparation for their shipment out of the State are producing establishments for purposes of section 12 (a).[21] However, the handling or working on goods, performed by employees of carriers which accomplishes the interstate transit or movement in commerce itself, does not constitute production under the act.[22]

§ 450.8 *"Establishment situated in the United States".* (a) The statute does not expressly define "establishment." Accordingly, the term should be given a meaning which is not only consistent with its ordinary usage, but also designed to accomplish the general purposes of the act. As normally used in business and in Government, the word "establishment" refers to a distinct physical place of business. This is the meaning attributed to the term as it is used in section 13 (a) (2) of the act.[23] Since the establishments covered under section 12 (a) of the act are those in which goods are produced, the term "establishment" there refers to a physical place where goods are produced. Typical producing establishments are industrial plants, mines, quarries, and the like. The producing establishment, however, need not have a permanently fixed location as is the case with a factory or mine. A boat, for instance, where productive activities such as catching or canning fish are carried on, is considered a producing establishment for purposes of section 12 (a).

Frequently, questions arise as to what should be considered a single establishment. No hard and fast rule can be laid down which will fix the area of all establishments. Accordingly, a determination of the area contained in a single establishment must be based upon the facts of each individual situation. Facts which are particularly pertinent in this connection, however, are those which relate to the physical characteristics and the manner of operation and control of the business. Sometimes, an establishment may extend over an area of several square miles as is common with farms, logging enterprises, mines, and quarries. On the other hand, it may be confined to a few square feet. A typical illustration of this is a loft building that houses the workshops of hun-

[17] See footnote 12.

[18] See Part 776 (Interpretative Bulletin on the coverage of the wage and hours provisions) issued by the Administrator of the Wage and Hour Division. Also, see §§ 450.11 and 450.12 of this bulletin.

[19] For a more complete discussion of these words, see § 776.16 of Part 776 (bulletin on coverage of the wage and hours provisions) of Chapter V of this title.

[20] In Western Union Telegraph Co. v. Lenroot, 323 U. S. 490, the Supreme Court stated that these words bring within the statutory definition "every step in putting the subject of commerce in a state to enter commerce," including "all steps, whether manufacture or not, which lead to readiness for putting goods into the stream of commerce," and "every kind of incidental operation preparatory to putting goods into the stream of commerce."

[21] Lenroot v. Kemp and Lenroot v. Hazlehurst Mercantile Co., 153 F. 2d 153 (C. A. 5), where the court directed issuance of injunctions to restrain violations of the child labor provisions by operators of vegetable packing sheds at which they bought, then washed, sorted, crated, and packed cabbages and tomatoes for shipment in interstate commerce.

[22] Western Union Telegraph Co. v. Lenroot, 323 U. S. 490.

[23] A. H. Phillips, Inc. v. Walling, 324 U. S. 490. See Part 779 (bulletin on the retail and service establishment exemption from the wage and hours provisions) of Chapter V of this title.

dreds of independent manufacturing firms. Each of the workshops is, for purposes of this subsection, a separate establishment.

Similar principles are applicable in determining whether several buildings located on the same premises constitute one establishment or more than one. For example, where several factory buildings are located on the same premises and owned and operated by the same person, they are generally to be considered as a single establishment. On the other hand, factory buildings located on the same premises, but owned and operated by different persons, will not ordinarily be treated as a single establishment. Where the several factories, however, are engaged in a joint productive enterprise, they may constitute a single establishment. This is the case, for example, where a large shipyard contains the plants of a number of subcontractors who are engaged in making parts or equipment for the boats that are built in the yard.

(b) The phrase "situated in the United States" is construed to include any of the 48 States or the District of Columbia or any Territory or possession of the United States.

§ 450.9 *"In or about".* Section 12 (a) excludes from the channels of interstate commerce goods produced in an establishment "in or about" which oppressive child labor has been employed. In a great many situations it is obviously easy to determine whether a minor is employed "in" an establishment. Thus, he is so employed where he performs his occupational duties on the premises of the producing establishment. Furthermore, a minor is also considered as employed in an establishment where he performs most of his duties off the premises but is regularly required to perform certain occupational duties in the establishment, such as loading or unloading a truck, checking in or out, or washing windows. This is true in such cases even though the minor is employed by someone other than the owner or operator of the particular establishment. On the other hand, a minor is not considered to be employed in an establishment other than his employer's merely because such establishment is visited by him for brief periods of time and for the sole purpose of picking up or delivering a message or other small article.

If, in the light of the preceding statements, the minor cannot be considered as employed in the establishment, he may, nevertheless, be employed "about" it if he performs his occupational duties sufficiently close in proximity to the actual place of production to fall within the commonly understood meaning of the term "about." This would be true in a situation where the foregoing proximity test is met and the occupation of the minor is directly related to the activities carried on in the producing establishment. In this connection, occupations are considered sufficiently related to the activities carried on in the producing establishment to meet the second test above at least where the requisite relationship to production of goods exists within the meaning of section 3 (j) of the act.[20] By way of example, a driver's helper employed to assist in the distribution of the products of a bottling company who regularly boards the delivery truck immediately outside the premises of the bottling plant is considered employed "in or about" such establishment, without regard to whether he ever enters the plant itself. On the other hand, employees working entirely within one establishment are not considered to be employed "in or about" a wholly different establishment occupying separate premises and operated by another employer. This would be true even though the two establishments are contiguous. But in other situations the distance between the producing establishment and the minor's place of employment may be a decisive factor. Thus, a minor employed in clearing rights-of-way for power lines many miles away from the power plant cannot well be said to be employed "in or about" such establishment. In view of the great variety of establishments and employments, however, no hard and fast rule can be laid down which will once and for all distinguish between employments that are "about" an establishment and those that are not. Therefore, each case must be determined on its own merits. In determining whether a particular employment is "about" an establishment, consideration of the following factors should prove helpful: (1) actual distance between the producing establishment and the minor's place of employment; (2) nature of the establishment; (3) ownership or control of the premises involved; (4) nature of the minor's activities in relation to the establishment's purpose; (5) identity of the minor's employer and the establishment's owner; (6) extent of control by the producing establishment's owner over the minor's employment.

§ 450.10 *Removal "within 30 days."* According to section 12 (a) goods produced in an establishment in or about which oppressive child labor has been employed are barred as "hot goods" from being shipped or delivered for shipment in commerce in the following two situations: First, if they were removed from the establishment while any oppressive child labor was still being employed in or about it; second, if they were removed from an establishment in or about which oppressive child labor was no longer employed but less than 30 days had then elapsed since any such employment of oppressive child labor came to an end. Once any goods have been removed from a producing establishment within the above-mentioned thirty-day period, they are barred at any time thereafter from being shipped or delivered for shipment in commerce so long as they remain "goods" for purposes of the act.[21] Goods are considered removed from an establishment just as soon as they are taken away from the establishment as that term has been defined.[22] The statute does not require that this "removal" from the establishment be made for the purpose or in the course of a shipment or delivery for shipment in commerce. A "removal" within the meaning of the statute also takes place where the goods are removed from the establishment for some other purpose such as storage, the granting of a lien or other security interest, or further processing.

COVERAGE OF SECTION 12 (c)

§ 450.11 *General.* Section 12 (c) of the act provides as follows: "No employer shall employ any oppressive child labor in commerce or in the production of goods for commerce."

This provision, which was added by the Fair Labor Standards Amendments of 1949,[23] broadens child labor coverage to include employment in commerce. Moreover, it establishes a direct prohibition of the employment of oppressive child labor in commerce or in the production of goods for commerce. The legislative history pertaining to this provision leads to the conclusion that Congress intended its application to be generally consistent with that of wage and hours coverage provisions. The application of the provision depends on the existence of two necessary elements: (1) the employment of "oppressive child labor" [24] by some employer and (2) the employment of such oppressive child labor in commerce or in the production of goods for commerce.

§ 450.12 *Employment [25] "in commerce or in the production of goods for commerce".* (a) The term "employ" is broadly defined in section 3 (g) of the act to include "to suffer or permit to work." The act expressly provides that the term "employer" includes "any person acting directly or indirectly in the interest of an employer in relation to an employee." The nature of an employer-employee relationship is ordinarily to be determined not solely on the basis of the contractual relationship between the parties but also in the light of all the facts and circumstances. Moreover, the terms "employer" and "employ" as used in the act are broader than the common-law concept of employment and must be interpreted broadly in the light of the mischief to be corrected. Thus, neither the technical relationship between the parties nor the fact that the minor is unsupervised or receives no compensation is controlling in determining whether an employer-employee relationship exists for purposes of section 12 (c) of the act. However, these

[20] See Part 776 (bulletin on coverage of the wage and hours provisions) of Chapter V of this title.

[21] However, section 12 (a) contains a provision relieving innocent purchasers from liability thereunder provided certain conditions are met. For a discussion of this provision, see § 450.24.

Also, section 15 (a) (1) relieves any common carrier from liability under the act for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier.

[22] For a discussion of the meaning of "establishment," see § 450.8.

[23] Pub. Law 393, 81st Cong., 1st sess. (63 Stat. 910). These amendments became effective on January 25, 1950.

[24] "Oppressive child labor" is discussed in §§ 450.16 to 450.20, inclusive.

[25] For a more detailed discussion, see Part 787 (bulletin on employment issued by the Administrator of the Wage and Hour Division) of Chapter V of this title.

are matters which should be considered along with all other facts and circumstances surrounding the relationship of the parties in arriving at such determination. The words "suffer or permit to work" include those who suffer by a failure to hinder and those who permit by acquiescence in addition to those who employ by oral or written contract. A typical illustration of employment of oppressive child labor by suffering or permitting an under-aged minor to work is that of an employer who knows that his employee is utilizing the services of such a minor as a helper or substitute in performing his employer's work. If the employer acquiesces in the practice or fails to exercise his power to hinder it, he is himself suffering or permitting the helper to work and is, therefore, employing him, within the meaning of the act. Where employment does exist within the meaning of the act, it must, of course, be in commerce or in the production of goods for commerce in order for section 12 (c) to be applicable.

(b) As previously indicated, the scope of coverage of section 12 (c) of the act is, in general, coextensive with that of the wage and hours provisions. The basis for this conclusion is provided by the similarity in the language used in the respective provisions and by statements appearing in the legislative history concerning the intended effect of the addition of section 12 (c). Accordingly, it may be generally stated that employees considered to be within the scope of the phrases "in commerce or in the production of goods for commerce" for purposes of the wage and hours provisions are also included within the identical phrases used in section 12 (c). To avoid needless repetition, reference is herein made to the full discussion of principles relating to the general coverage of the wage and hours provisions contained in Part 776 (Interpretative Bulletin issued by the Administrator of the Wage and Hour Division) of Chapter V of this title. In this connection, however, it should be borne in mind that lack of coverage under the wage and hours provisions or under section 12 (c) does not necessarily preclude the applicability of section 12 (a) of the act.[20]

JOINT AND SEPARATE APPLICABILITY OF SECTIONS 12 (A) AND 12 (C)

§ 450.13 *General.* It should be noted that section 12 (a) does not directly outlaw the employment of oppressive child labor. Instead, it prohibits the shipment or delivery for shipment in interstate or foreign commerce of goods produced in an establishment where oppressive child labor has been employed within 30 days before removal of the goods. Section 12 (c), on the other hand, is a direct prohibition against the employment of oppressive child labor in commerce, or in the production of goods for commerce. Moreover, the two subsections provide different methods for determining the employees who are covered thereby. Thus, subsection (a) may be said to apply to young workers on an "establishment" basis. If the standards for child labor are not observed in the employment of minors in or about an establishment where goods are produced and from which such goods are removed within the statutory 30-day period, it becomes unlawful for any producer, manufacturer, or dealer (other than an innocent purchaser who is in compliance with the requirements for a good faith defense as provided in the subsection) to ship or deliver those goods for shipment in commerce. It is not necessary for the minor himself to have been employed by the producer of such goods or in their production in order for the ban to apply. On the other hand, whether the employment of a particular minor below the applicable age standard will subject his employer to the prohibition of subsection (c) is dependent upon the minor himself being employed in commerce or in the production of goods for commerce, within the meaning of the act. If such a minor is so employed by his employer and is not specifically exempt from the child labor provisions then his employment under such circumstances constitutes a violation of section 12 (c) regardless of where he may be employed or what his employer may do. Moreover, a violation of section 12 (c) occurs under the foregoing circumstances without regard to whether there is a "removal" of goods or a shipment or delivery for shipment in commerce.

§ 450.14 *Joint applicability.* The child labor coverage provisions contained in sections 12 (a) and 12 (c) of the act may be jointly applicable in certain situations. For example, a manufacturer of women's dresses who ships them in interstate commerce, employs a minor under 16 years of age who gathers and bundles scraps of material in the cutting room of the plant. Since the employment of the minor under such circumstances constitutes oppressive child labor and involves the production of goods for commerce, the direct prohibition of section 12 (c) is applicable to the case. In addition, section 12 (a) also applies to the manufacturer if the dresses are removed from the establishment during the course of the minor's employment or within 30 days thereafter. To illustrate further, suppose that a transportation company employs a 17-year-old boy as helper on a truck used for hauling materials between railroads and the plants of its customers who are engaged in producing goods for shipment in commerce. The employment of the minor as helper on a truck is oppressive child labor because such occupation has been declared particularly hazardous by the Secretary for children between 16 and 18 years of age. Since his occupation involves the transportation of goods which are moving in interstate commerce, his employment in such occupation by the transportation company is, therefore, directly prohibited by the terms of section 12 (c). If the minor's duties in this case should, for example, include loading and unloading the truck at the establishments of the customers of his employer, then the provisions of section 12 (a) might be applicable with respect to such customers. This would be true where any goods which they produce and ship in commerce are removed from the producing establishment within 30 days after the minor's employment there.

§ 450.15 *Separate applicability.* There are situations where section 12 (c) does not apply because the minor himself is not considered employed in commerce or in the production of goods for commerce. This does not exclude the possibility of coverage under the provisions of section 12 (a), however. Thus, the employment of a minor by a local window-cleaning company to wash the windows of a factory producing goods for shipment in commerce is not subject to section 12 (c) because the work performed by the minor is not closely related and directly essential to production. However, the prohibition contained in section 12 (a) would apply in such a situation to shipments from the factory of goods removed within the statutory 30-day period provided, of course, the minor was below the applicable age minimum. In those cases where oppressive child labor is employed in commerce but not in or about a producing establishment, coverage exists under section 12 (c) but not under the provisions of section 12 (a). The employment of telegraph messengers under 16 years of age would normally involve this type of situation.[21] There may also be cases where oppressive child labor is employed in occupations closely related and directly essential to the production of goods in a separate establishment and therefore covered by section 12 (c) but due to the fact that none of the goods produced in the establishment where the minors work are ever shipped or delivered for shipment in commerce either in the same form or as a part or ingredient of other goods, coverage of section 12 (a) is lacking. An illustration of this type of situation would be the employment of a minor under the applicable age minimum in a plant engaged in the production of electricity which is sold and consumed exclusively within the same State and some of which is used by establishments in the production of goods for commerce.

OPPRESSIVE CHILD LABOR

§ 450.16 *General.* Section 3 (l) of the act defines "oppressive child labor" as follows:

"Oppressive child labor" means a condition of employment under which (1) any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or well-being) in any occupation, or (2) any employee between the ages of sixteen and eighteen years is employed by an employer in any occupa-

[20] See § 450.15.

[21] In Western Union Telegraph Co. v. Lenroot, 323 U. S. 490, the court held section 12 (a) inapplicable to Western Union on the grounds that the company does not "produce" or "ship" goods within the meaning of that subsection.

tion which the Secretary of Labor shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being, but oppressive child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labor certifying that such person is above the oppressive child labor age. The Secretary of Labor shall provide by regulation or by order that the employment of employees between the ages of fourteen and sixteen years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor if and to the extent that the Secretary of Labor determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

It will be noted that the term includes generally the employment of young workers under the age of 16 years in any occupation. In addition, the term includes employment of minors 16 and 17 years of age by an employer in any occupation which the Secretary finds and declares to be particularly hazardous for the employment of children of such ages or detrimental to their health or well-being. Authority is also given the Secretary to issue orders or regulations permitting the employment of children 14 and 15 years of age in nonmanufacturing and nonmining occupations where he determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being. The subsection further provides for the issuance of age certificates pursuant to regulations of the Secretary which will protect an employer from unwitting employment of oppressive child labor.

§ 450.17 *Sixteen-year minimum.* The act sets a 16-year age minimum for employment in manufacturing or mining occupations. Furthermore, this age minimum is applicable to employment in all other occupations unless otherwise provided by regulation or order issued by the Secretary.

§ 450.18 *Fourteen-year minimum.* With respect to employment in occupations other than manufacturing and mining, the Secretary is authorized to issue regulations or orders lowering the age minimum to 14 years where he finds that such employment is confined to periods which will not interfere with the minors' schooling and to conditions which will not interfere with their health and well-being. Pursuant to this authority, the Secretary permits the employment of 14- and 15-year-old children in a limited number of occupations where the work is performed outside school hours and is confined to other specified limits. Under the provisions of Child Labor Regulation No. 3, as amended,[28] employment of minors in this age group is not permitted in the following occupations: (a) Manufacturing, mining, or processing occupations; (b) occupations requiring the performance of any duties in a work room or work place where goods are manufactured, mined or otherwise processed; (c) occupations involving the operation or tending of hoisting apparatus or of any power-driven machinery other than office machines; (d) public messenger service; (e) occupations declared to be particularly hazardous or detrimental to health or well-being by the Secretary; or (f) occupations (except office or sales work) in connection with (1) transportation of persons or property by rail, highway, air, water, pipeline, or other means; (2) warehousing and storage; (3) communications and public utilities; and (4) construction (including demolition and repair). The exception permitting office and sales work performed in connection with the occupations specified in (f) above does not apply if such work is performed on trains or any other media of transportation or at the actual site of construction operations. Employment of fourteen- and fifteen-year-olds in all occupations other than the foregoing is permitted by the Regulation, if the following conditions are observed: (1) employment only outside school hours and between the hours of 7 a. m. and 7 p. m.; (2) employment for not more than 3 hours a day nor more than 18 hours a week when school is in session; and, (3) employment for not more than 8 hours a day nor more than 40 hours a week when school is not in session. The employment of minors under 14 years of age is not permissible, under any circumstances if the employment is covered by the child labor provisions and not specifically exempt.

§ 450.19 *Eighteen-year minimum.* To protect young workers from hazardous employment, the act provides for a minimum age of 18 years in occupations found and declared by the Secretary to be particularly hazardous or detrimental to health or well-being for minors 16 and 17 years of age. Hazardous-occupations orders are the means through which occupations are declared to be particularly hazardous for minors. They are issued after public hearing and advice from committees composed of representatives of employers and employees of the industry and the public and in accordance with procedure established in Child Labor Regulation No. 5.[29] The effect of these orders is to raise the minimum age for employment to 18 years in the occupations covered. Seven orders[30] have thus far been issued under the act and are now in effect. In general, they cover:

No. 1. Occupations in or about plants manufacturing explosives or articles containing explosive components.

No. 2. Occupations of motor-vehicle driver and helper.

No. 3. Coal-mine occupations.

No. 4. Logging occupations and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill.

No. 5. Occupations involved in the operation of power-driven woodworking machines.

No. 6. Occupations involving exposure to radioactive substances.

No. 7. Occupations involved in the operation of power-driven hoisting apparatus.

§ 450.20 *Age certificates.* To protect an employer from unwitting violation of the minimum age standards, it is provided in section 3 (l) (2) of the act that "oppressive child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labor certifying that such person is above the oppressive child labor age." An age certificate is a statement of a minor's age issued under regulations of the Secretary (Child Labor Regulation No. 1),[31] based on the best available documentary evidence of age, and carrying the signatures of the minor and the issuing officer. Its purpose is to furnish an employer with reliable proof of the age of a minor employee in order that he may, as specifically provided by the act, protect himself against unintentional violation of the child labor provisions. Pursuant to the regulations of the Secretary, State employment or age certificates are accepted as proof of age in 44 States, the District of Columbia, Hawaii, and Puerto Rico, and Federal certificates of age in Idaho, Mississippi, South Carolina and Texas. If there is a possibility that the minor whom he intends to employ is below the applicable age minimum for the occupation in which he is to be employed, the employer should obtain an age certificate for him.

It should be noted that the age certificate furnishes protection to the employer as provided by the act only if it shows the minor to be above the minimum age applicable thereunder to the occupation in which he is employed. Thus, a State certificate which shows a minor's age to be above the minimum required by State law for the occupation in which he is employed does not protect his employer for purposes of the Fair Labor Standards Act unless the age shown on such certificate is also above the minimum provided under that act for such occupation.

EXEMPTIONS

§ 450.21 *General.* Specific exemptions from the child labor requirements of the act are provided for (a) employment of children in agriculture outside of school hours for the school district where they live while so employed; (b) employment of employees engaged in the delivery of newspapers to the consumer; (c) employment of children as actors or performers in motion pictures or in theatrical, radio, or television productions; and (d) employment by a parent or a person standing in a parent's place of his own child or a child in his custody under the age of sixteen years in any occupation other than the following: (1) Manufacturing, (2) mining, (3) an occupation found by the Secretary to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or well-being. In his interpretations of these provisions, the Secretary will be guided by

[28] 29 CFR Part 441 as amended.

[29] 29 CFR Part 421.

[30] 29 CFR Part 422.

[31] 29 CFR Part 401.

the principle that such exemptions should be narrowly construed and their application limited to those employees who are plainly and unmistakably within their terms. Thus, the fact that a child's occupation involves the performance of work which is considered exempt from the child labor provisions will not relieve his employer from the requirements of section 12 (c) or the producer, manufacturer, or dealer from the requirements of section 12 (a) if, during the course of his employment, the child spends any part of his time doing work which is covered but not so exempt.

§ 450.22 *Agriculture.* Section 13 (c) of the act provides an exemption from the child labor provisions for "any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed." This is the only exemption from the child labor provisions relating to agriculture or the products of agriculture. The various agricultural exemptions provided by sections 7 (b) (3), 7 (c), 13 (a) (6), 13 (a) (10) and 13 (b) (5) from all or part of the minimum wage and overtime pay requirements are not applicable to the child labor provisions. This exemption, it will be noted, is limited to periods outside of school hours in contrast to the complete exemption for employment in "agriculture" under the wage and hours provisions. Under the original act, the exemption became operative whenever the applicable State law did not require the minor to attend school. The legislative history clearly indicates that in amending this provision, Congress sought to establish a clearer and simpler test for permissive employment which could be applied without the necessity of exploring State legal requirements regarding school attendance in the particular State. It recognized that the original provision fell short of achieving the objective of permitting agricultural work only so long as it did not infringe upon the opportunity of children for education. By recasting the exemption on an "outside of school hours" basis, Congress intended to provide a test which could be more effectively applied toward carrying out this purpose.

The applicability of the exemption to employment in agriculture as defined in section 3 (f) [31] of the act depends in general upon whether such employment conflicts with school hours for the locality where the child lives. Since the phrase "school hours" is not defined in the act, it must be given the meaning that it has in ordinary speech. Moreover, it will be noted that the statute speaks of school hours "for the school district" rather than for the individual child. Thus, the provision does not depend for its application upon the individual student's requirements for attendance at school. For example, if an individual student is excused from his studies for a day or a part of a day by the superintendent or the school board, the exemption would not apply if school was in session then. "Outside of school hours" generally may be said to refer to such periods as before or after school hours, holidays, summer vacation, Sundays, or any other days on which the school for the district in which the minor lives does not assemble. Since "school hours for the school district" do not apply to minors who have graduated from high school, the entire year would be considered "outside of school hours" and, therefore, their employment in agriculture would be permitted at any time.

Attention is directed to the fact that by virtue of the parental exemption provided in section 3 (l) of the act, children under 16 years of age are permitted to work for their parents on their parents' farms at any time provided they are not employed in a manufacturing or mining occupation.

The orders (Part 422 of this title) declaring certain occupations to be particularly hazardous for the employment of minors between 16 and 18 years of age or detrimental to their health or well-being do not apply to employment in agriculture, pending study as to the hazardous or detrimental nature of occupations in agriculture.[32]

§ 450.23 *Delivery of newspapers.* Section 13 (d) of the act provides an exemption from the child labor as well as the wage and hours provisions for employees engaged in the delivery of newspapers to the consumer. This provision applies to carriers engaged in making deliveries to the homes of subscribers or other consumers of newspapers (including shopping news). It also includes employees engaged in the street sale or delivery of newspapers to the consumer. However, employees engaged in hauling newspapers to drop stations, distributing centers, newsstands, etc., do not come within the exemption because they do not deliver to the consumer.

§ 450.24 *Actors and performers.* Section 13 (c) of the act provides an exemption from the child labor provisions for "any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions." The term "performer" used in this provision is obviously more inclusive than the term "actor." In regulations issued pursuant to section 7 (d) (3) of the act, the Administrator of the Wage and Hour Division has defined a "performer" on radio and television programs for purposes of that section.[33] The Secretary will follow this definition in determining whether a child is employed as a "* * * performer * * * in radio or television productions" for purposes of this exemption. Moreover, in many situations the definition will be helpful in determining whether a child qualifies as a "* * * performer in motion pictures or theatrical productions * * *" within the meaning of the exemption.

§ 450.25 *Parental exemption.* By the parenthetical phrase included in section 3 (l) (1) of the act, a parent or a person standing in place of a parent may employ his own child or a child in his custody under the age of 16 years in any occupation other than the following: (a) Manufacturing; (b) mining; (c) an occupation found by the Secretary to be particularly hazardous or detrimental to health or well-being for children between the ages of 16 and 18 years. This exemption may apply only in those cases where the child is exclusively employed by his parent or a person standing in his parents' place. Thus, where a child assists his father in performing work for the latter's employer and the child is considered to be employed both by his father and his father's employer, the parental exemption would not be applicable. The words "parent" or a person standing in place of a parent" include natural parents, or any other person, where the relationship between that person and a child is such that the person may be said to stand in place of a parent. For example, one who takes a child into his home and treats it as a member of his own family, educating and supporting the child as if it were his own, is generally said to stand to the child in place of a parent. It should further be noted that occupations found by the Secretary to be hazardous or detrimental to health or well-being for children between 16 and 18 years of age, as well as manufacturing and mining occupations, are specifically excluded from the scope of the exemption.

ENFORCEMENT

§ 450.26 *General.* Section 15 (a) (4) of the act makes any violation of the provisions of sections 12 (a) or 12 (c) unlawful. Any such unlawful act or practice may be enjoined by the United States District Courts under section 17 upon court action, filed by the Secretary pursuant to section 12 (b) and, if willful, will subject the offender to the criminal

[31] "Agriculture" as defined in section 3 (f) includes "farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15 (g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry, or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market."

[32] See the footnote to the headnote, 29 CFR Part 422.

[33] Section 550.2 (b) of this title provides:

(b) The term "performer" shall mean a person who performs a distinctive, personalized service as a part of an actual broadcast or telecast including an actor, singer, dancer, musician, comedian, or any person who entertains, affords amusement to, or occupies the interest of a radio or television audience by acting, singing, dancing, reading, narrating, performing feats of skill, or announcing, or describing or relating facts, events and other matters of interest, and who actively participates in such capacity in the actual presentation of a radio or television program. It shall not include such persons as script writers, stand-ins, or directors who are neither seen nor heard by the radio or television audience; nor shall it include persons who participate in the broadcast or telecast purely as technicians such as engineers, electricians and stage hands;

penalties provided in section 16 (a) of the act.[35]

§ 450.27 *Good faith defense.* A provision is contained in section 12 (a) of the act relieving any purchaser from liability thereunder who ships or delivers for shipment in commerce goods which he acquired in good faith in reliance on written assurance from the producer, manufacturer, or dealer that the goods were produced in compliance with section 12, and which he acquired for value without notice of any violation.[36]

§ 450.28 *Relation to other laws.* Section 18 provides, in part, that "no provision of this act relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this act." The child labor requirements of the Fair Labor Standards Act, as amended, must be complied with as to the employment of minors within their general coverage and not excepted from their operation by special provision of the act itself regardless of any State, local, or other Federal law that may be applicable to the same employment. Furthermore, any administrative action pursuant to other laws, such as the issuance of a work permit to a minor or the referral by an employment agency of a minor to an employer does not necessarily relieve a person of liability under this act. Where such other legislation is applicable and does not contravene the requirements of the Fair Labor Standards Act, however, nothing in the act, the regulations or the interpretations announced by the Secretary should be taken to override or nullify the provisions of these laws. Although compliance with other applicable legislation does not constitute compliance with the act unless the requirements of the act are thereby met, compliance with the act, on the other hand, does not relieve any person of liability under other laws that establish higher child labor standards than those prescribed by or pursuant to the act. Moreover, such laws, if at all applicable, continue to apply to the employment of all minors who either are not within the general coverage of the child labor provisions of the act or who are specifically excepted from their requirements.

Signed at Washington, D. C., this 27th day of July 1950.

MAURICE J. TOBIN,
Secretary of Labor.

[F. R. Doc. 50-6810; Filed, Aug. 7, 1950; 8:45 a. m.]

[35] Section 16 (a) provides:

Any person who willfully violates any of the provisions of section 15 shall upon conviction thereof be subject to a fine of not more than $10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

[36] For a complete discussion of this subject see Part 769 of this title, General Statement on the Provisions of section 12 (a) and section 15 (a) (1) of the Fair Labor Standards Act, as amended, relating to Written Assurances.

TITLE 32—NATIONAL DEFENSE

Chapter V—Department of the Army

Subchapter F—Personnel

PART 577—MEDICAL AND DENTAL ATTENDANCE

MISCELLANEOUS AMENDMENTS

Rescind §§ 577.3 and 577.4 and substitute the following in lieu thereof:

§ 577.3 *Civilian medical care for Army personnel*—(a) *For whom authorized.* (1) Civilian medical care at the expense of Army Medical Service funds is authorized for the following personnel and none other when the required care cannot be provided by available medical treatment facilities of the Department of Defense or other governmental agencies.

(i) Officers, contract surgeons (full time), warrant officers, enlisted personnel, cadets of United States Military Academy, general prisoners, and prisoners of war, when on a duty status or when absent on any authorized leave or pass. Such attendance will not be authorized when absent without leave.

(ii) Applicants for enlistment and selectees while being processed.

(2) Elective medical treatment in civilian medical treatment facilities or by civilian physicians will not be authorized or paid for from the above-mentioned funds.

(b) *Ordinary medical care.* (1) Personnel authorized civilian medical care who are not serving under an immediate commanding officer may engage civilian medical care without prior authorization of the approving authority when the urgency of the situation prevents obtaining such prior authorization, or when serving outside the continental United States in areas not under an oversea commander.

(2) A local commanding officer may engage or authorize necessary civilian medical care for himself or for persons under his jurisdiction:

(i) When the cost will not exceed $100 except when the individual for whom the medical care is required is serving outside continental United States and not under the jurisdiction of an oversea commander, or

(ii) When the urgency of the situation does not permit obtaining prior authorization.

(c) *Specialist service.* (1) The engagement of a civilian specialist (as distinguished from appointed civilian professional consultants) at the expense of Army Medical Service funds is authorized only for those personnel specified in paragraph (a) of this section and is subject to prior authorization of the appropriate approving authority, except when the urgency of the situation is such that the services of the civilian specialist are immediately necessary to save life or prevent undue suffering or distress.

(2) Accounts for the engagement of consultation service (as distinguished from the services of appointed civilian professional consultants) will be allowed only in the most extraordinary cases.

(d) *Allowances.* The rates of compensation allowed for civilian medical care will be published annually in a Department of the Army circular.

§ 577.4 *Medical attendance in medical treatment facilities of Federal agencies outside Department of Defense*—(a) *For whom authorized.* Medical care in medical treatment facilities of other Federal agencies at the expense of Medical Department funds is authorized for the following personnel when the required care cannot be provided by available medical treatment facilities of the Department of Defense:

(1) Officers, contract surgeons (full time), warrant officers, enlisted personnel, cadets of United States Military Academy, general prisoners, and prisoners of war. The duty status of these individuals does not affect their authority to receive medical care.

(2) Applicants for enlistment and selectees while being processed.

(3) Civilian employees under SR 40-220-5 (Special Regulations pertaining to Army Federal Civilian Employees Health Service Programs).

(b) *Rates of charge.* Charges for hospitalization or treatment will be at rates prescribed for pay patients for the applicable fiscal year. The Surgeon General will reimburse the Federal agency for authorized charges and, in those cases where the patient is not entitled to subsistence at Government expense, will collect from the patient and deposit the funds to the proper appropriation.

[SR 40-505-11, July 20, 1950; SR 50-505-12, June 15, 1950] (R. S. 161; 5 U. S. C. 22)

[SEAL] EDWARD F. WITSELL,
Major General, U. S. Army,
The Adjutant General.

[F. R. Doc. 50-6923; Filed, Aug. 7, 1950; 8:50 a. m.]

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans' Administration

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

SUBPART B—EDUCATION AND TRAINING

MISCELLANEOUS AMENDMENTS

1. Section 21.202 is amended to read as follows:

§ 21.202 *Devotion of full time to training.* (a) (1) Training under Veterans Regulation 1 (a), as amended (38 U. S. C. ch. 12), Part VII will be prescribed and provided only in such kind and amount that, except as provided in paragraph (b) (1) and (2) of this section, such training will require the veteran to devote full time to his course of vocational rehabilitation. This full-time requirement will be considered to have been met only when the kind and amount of material to be learned during the prescribed length of the course is such that the course necessarily will require the veteran to give it his undivided attention and effort and will require the veteran to devote to the pursuit of his course approximately as much time per week (in the case of a school course this will include any normal time required for preparation outside the school) as

is commonly applied to employment in the particular occupation for which the veteran is training: *Provided*, That under particular conditions specialized restorative training may be provided on a part-time basis as set forth in § 21.201 (d) (5).

(2) A school course which does not meet the requirements of subparagraph (1) of this paragraph will not be prescribed except where:

(i) The course is modified for the particular veteran so that it does meet the provisions of subparagraph (1) of this paragraph either by arranging for additional hours of instruction, with corresponding shortening of the duration of the course, or by supplementing the course with additional subject matter which is necessary or at least clearly contributes to rendering the trainee satisfactorily employable in the chosen occupation and/or

(ii) The school course is supplemented by providing part-time on-the-job training for the selected occupation, wherever practicable, in a training establishment where there is good promise of employment upon completion of the school course.

(b) Where restoration of a veteran's employability is determined to be practicable through the pursuit of a course of training but the assigned medical consultant determines that due to the limitations imposed by the veteran's disability the maximum time that should be devoted currently by the veteran to training is less than full time as contemplated in paragraph (a) of this section, the veteran may be placed in a reduced-time training program where:

(1) The assigned medical consultant determines that the amount of time which can be devoted currently by the veteran to training is as great as the veteran's disability ever will permit: *Provided*, That the prescribed course can be completed in 48 months of training or is authorized under § 21.206 (a) (1) (i) or (iii) to exceed 48 months, or

(2) The assigned medical consultant determines that the veteran is able to devote at least 4 hours per day 5 days per week to training exclusive of time if any required to travel to and from the place of training and that there is reasonable promise that during training the veteran's work tolerance will increase steadily to such extent that he will be able to pursue training on a full time basis and the chief, education and training section, determines that considering the determination of the assigned medical consultant there is reasonable assurance that the veteran will attain the selected employment objective within the statutory period of 48 months or within a period exceeding 48 months where authorized under § 21.206 (a) (1) (i) or (iii): *Provided*, That the individual training program will be so developed that it will require the veteran to devote to his training that amount of time which was determined by the assigned medical consultant to be the maximum time which the veteran currently can devote to training (in the case of a school course this will include any normal time required for preparation outside the school).

(c) In the case of each veteran inducted into reduced-time training under paragraph (b) (1) or (2) of this section, there will be prepared and placed in the veteran's training subfolder a statement showing under which of those two subparagraphs the veteran's induction into reduced-time training was authorized and giving the facts upon which the determination to place the veteran into training was made.

(d) Until a veteran inducted into training under paragraph (b) (2) of this section is pursuing training on a full time basis, at the end of each 90-day period (or at the end of each term or semester if the veteran is pursuing a school course conducted on a term or semester basis) the chief, education and training section:

(1) Will obtain medical determination as to the veteran's current work tolerance, and

(2) Will assure himself that all of the conditions set forth in paragraph (b) (2) of this section continue to be met, and

(3) Will effect prompt adjustment in the number of hours devoted by the veteran to training to conform with the current medical determination.

(e) A veteran inducted into training under paragraph (b) (2) of this section will be removed from training under that subparagraph at any time that the chief, education and training section, finds that one or more of the following conditions exist:

(1) The veteran's work tolerance as determined by the assigned medical consultant falls below the 4 hours per day 5 days per week stipulated in paragraph (b) (2) of this section, or

(2) The assigned medical consultant has determined that there is no longer reasonable promise that during training the veteran's work tolerance will increase to such extent that he will be able to pursue training on a full time basis, or

(3) The veteran will not attain the selected employment objective within 48 months or within a period exceeding 48 months where induction into training was authorized under § 21.206 (a) (1) (i) or (iii). In such a case, § 21.206 (a) (1) (ii) may not be resorted to for the purpose of continuing the veteran in training on a reduced time basis under paragraph (b) (2), of this section.

(f) Where, pursuant to the provisions of paragraph (e) of this section, a veteran is removed from training under paragraph (b) (2) of this section, the chief, education and training section:

(1) Will interrupt the veteran's training until such time as all of the conditions of paragraph (b) (2) of this section again are met or until such time as the veteran is able to pursue full time training, or

(2) Where the veteran fully meets the requirements of paragraph (b) (1) of this section, will place the veteran into training under that subparagraph, or

(3) Will make other appropriate disposition of the veteran's case.

2. A new § 21.240a is added as follows:

§ 21.240a *Furnishing items susceptible of personal use.* Musical instruments, cameras and their accessories, tennis rackets, golf clubs, fountain pens, desk sets, and similar items which are susceptible of use for personal purposes will not be furnished unless indispensable to particular major or minor unit courses prescribed by the education and training section as essential to accomplishing the selected employment objective, and such items are otherwise furnishable under §§ 21.230 through 21.240, as applicable. Such items will not be furnished for elective courses.

3. Section 21.241 is amended to read as follows:

§ 21.241 *Furnishing special equipment.* (a) Supplies over and above those required by the school or establishment to be owned personally by all students pursuing the same course or over and above those furnishable under § 21.237a but which, because of the character of the veteran's disability, are necessary to enable the veteran to undertake and/or pursue, or continue to pursue, successfully the course of vocational rehabilitation which has been prescribed by the education and training section, shall be considered to be special equipment and shall be referred to as such.

(b) Special equipment as defined in paragraph (a) of this section may be authorized and furnished to trainees under Part VII, Veterans Regulation 1 (a), as amended (38 U. S. C. ch. 12), subject to the prior approval of central office for only two categories of conditions and purpose as follows:

(1) Where the equipment is necessary to enable the veteran to pursue the prescribed course of training which because of his disability he could not otherwise pursue successfully. That is, the equipment will enable the veteran to do and accomplish those things which persons not disabled are able to do without special equipment but which the particular veteran because of his disability cannot do and therefore cannot pursue the prescribed course satisfactorily. Equipment in this category ordinarily will be items not necessary to persons not disabled but may include such items modified in design and construction as, for example, a work bench or a work seat especially designed and constructed to compensate the veteran's inability to move about freely.

(2) Where the equipment is necessary to a veteran for whom the education and training section has prescribed and authorized a course of training in the home in accordance with § 21.201 (g) to enable the veteran to learn essential operations in the prescribed course. Equipment in this category is of a kind which ordinarily is made available by the school or training establishment but is not available to a veteran training in the home because of his inability to travel to a school or training establishment due to the limitations imposed by his disability.

(c) Requests for approval to furnish special equipment under this section will be submitted to central office accompanied by a detailed statement of all facts which necessitate furnishing the special equipment, including at least the following:

(1) The name, C–number, and address of the veteran needing the special equipment.

(2) The veteran's employment objective and code.

(3) Length of prescribed course and percentage of course already completed.

(4) Type of course prescribed as per § 21.201 and the school or establishment at which the veteran is pursuing or is to pursue the prescribed course.

(5) Description and cost of each item needed and the category of condition and purpose under which it is requested, i. e., § 21.241 (b) (1) or § 21.241 (b) (2).

(6) Where authority is requested to furnish items under paragraph (b) (1) of this section, a statement of the particular conditions which prevent or interfere with the disabled veteran's entering or pursuing training and which constitute the need for the equipment, and a showing of how the requested articles will overcome those conditions, including sufficient facts to establish that the furnishing of the special equipment is necessary because of the nature of the disability and the demands of the training course and that the trainee has sufficient physical and mental ability to make adequate use of the requested equipment in the course of training.

(7) Where authority is requested to furnish items under paragraph (b) (2) of this section, a statement indicating on what basis it has been determined that the veteran is not able to travel to a school or training establishment due to the limitations imposed by his disability and demonstrating why and how the use of the special equipment is necessary to learn specified essential operations in the prescribed course; and itemized list of all supplies furnished or proposed to be furnished to the veteran under § 21.237a; and sufficient facts to establish that the trainee has sufficient physical and mental ability to make adequate use of the requested equipment in the course of training.

(8) Definite evidence that such equipment or its equivalent has not been furnished previously to the veteran by the Veterans' Administration or otherwise.

(9) Recommendation of the special rehabilitation procedures supervisor.

(d) When any item is furnished a veteran under the provisions of this section, a complete record of each such item will be placed in the veteran's claims folder, also in the training subfolder, as a basis for avoiding the furnishing, in the future, of items which have already been supplied. The record of each item will include identifying data such as name of article, type, model, serial number, size, name of manufacturer, etc.

(e) Special equipment not required for training purposes but necessary to overcome the handicap of blindness as contemplated in Public Law 309, 78th Congress, will be furnished under that law rather than under Part VII, Veterans Regulation 1 (a), as amended (38 U. S. C. ch. 12).

(f) Where need for training has been determined solely on the basis of the service-connected disability, and the objective and training facility have been so chosen that the non-service-connected disability will have no effect, or the least possible effect, upon training to overcome the handicap of the service-connected disability and if it then develops that the necessary training cannot be pursued because of the non-service-connected disability, but the effect of the non-service-connected disability assuredly will be overcome by furnishing an item of special equipment, such special equipment may be provided under and subject to conditions of this section.

(g) If for any reason the veteran fails to complete the prescribed course of training in the home for which special equipment has been furnished under paragraph (b) (2) of this section, the veteran will be deemed to be at fault under § 21.243 (a) with respect to such special equipment only; and he will be required to return such equipment to the Veterans' Administration or to pay the reasonable value thereof: *Provided, however,* That if the veteran has completed such part of the prescribed course of training that he is found to be employable and has been declared rehabilitated under § 21.281 he will not be deemed to be at fault and he will not be required to return such equipment to the Veterans' Administration or to pay the reasonable value thereof. The veteran will be advised accordingly. With respect to any special equipment furnished to the veteran under paragraph (b) (1) of this section, a separate finding will be made under § 21.243 of whether the veteran's failure was due to fault on his part.

4. Section 21.252 is amended to read as follows:

§ 21.252 *Change of employment objective.* (a) A veteran once inducted into training under Part VII, Veterans Regulation 1 (a), as amended (38 U. S. C. ch. 12), ordinarily will be expected to pursue his training program to completion without changing his employment objective insofar as it is possible for him to do so. Accordingly, a change of employment objective will not be approved except where it is clear that such a change is necessary because (1) continuance of the veteran in training for the present objective will result in failure to accomplish bona fide vocational rehabilitation for reasons not within the veteran's control or (2) although the veteran could continue successfully in training for the present employment objective, the proposed employment objective is more in keeping with the veteran's interests and aptitudes and will not require any greater period of time for completion than the present employment objective.

(b) A change of employment objective will not be approved where a veteran's disability rating has been reduced to less than a compensable degree. Nor will a veteran be permitted to commence training for a new employment objective after his disability rating has been so reduced.

5. In § 21.281 (a), subparagraph (2) is amended to read as follows:

§ 21.281 *Status "rehabilitated."* (a) * * *

(2) When a trainee while in training status or while properly in interrupted status as required by § 21.282 accepts employment in the same occupation for which he is being trained or in an occupation for which the training received under Part VII has contributed materially toward rehabilitation, and his earnings approximate those of the average trained worker in the occupation, and the employment is such kind that to pursue it full time would be not incompatible with the trainee's disability—thus demonstrating attainment of satisfactory employment: *Provided,* That where such employment is not in the same occupation for which the veteran was being trained, his case will be referred to the advisement and guidance section for determination of whether the occupation in which the veteran is employed is compatible with the veteran's disability and aptitudes. If the findings of the advisement and guidance section are negative, the veteran will be placed in discontinued status.

* * * * *

6. In § 21.282, paragraph (e) is amended to read as follows:

§ 21.282 *Status "interrupted".* * * *

(e) The veteran has completed his course and has taken a required examination for license to practice the occupation for which he has been trained, and the results of the examination are not available on the day following completion of the examination.

(Sec. 2, 46 Stat. 1016, sec. 7, 48 Stat. 9, sec. 2, 57 Stat. 43, as amended, sec. 400, 58 Stat. 287, as amended; 38 U. S. C. and Sup. 11a, 701, 707, ch. 12 note. Interpret or apply secs. 3, 4, 57 Stat. 43, as amended, secs. 300, 1500–1504, 1506, 1507, 58 Stat. 286, 300, as amended; 38 U. S. C. and Sup. 693g, 697–697d, 697f, g, ch. 12 note)

This regulation effective August 8, 1950.

[SEAL] O. W. CLARK,
Deputy Administrator.

[F. R. Doc. 50-6879; Filed, Aug. 7, 1950; 8:55 a. m.]

TITLE 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 34—CLASSIFICATION AND RATES OF POSTAGE

FREE MAIL PRIVILEGE FOR MEMBERS OF ARMED FORCES OF THE U. S.

Part 34 (39 CFR), as amended, is further amended as follows:

In text, insert a new § 34.14a to read as follows:

§ 34.14a *Free mail privilege for members of the Armed Forces of the United States*—(a) *Law.* (1) Any first-class letter mail matter admissible to the mails as ordinary mail matter which is sent by a member of the Armed Forces of the United States, while on active duty or in the active service of the Armed Forces of the United States in Korea and such other areas as the President of the United States may hereafter designate as combat zones or theaters of military operations, to any person in the United States, including the Territories and possessions thereof, shall be transmitted in the mails free of postage, subject to such rules and regulations as the

Postmaster General may prescribe: *Provided*, That, when specified by the sender, letters weighing not to exceed one ounce shall be transmitted to destination by air mail, dependent upon air space availability therefor.

(Sec. 1, Pub. Law 609, approved July 12, 1950)

(2) The free mailing privileges above granted shall become effective upon the date of enactment of this act and shall continue until June 30, 1951, unless terminated at an earlier date by concurrent resolution of the Congress, or by direction of the President.

(Sec. 2, Pub. Law 609, approved July 12, 1950)

(b) *Regulations.* (1) Letters sent by members of the Armed Forces of the United States in Korea and such other areas as the President may designate, to be mailed free of postage, shall bear in the upper right corner of the address side in the handwriting of the sender the word "Free" and in the upper left corner the written name of the sender together with his serial number, his rank or rating, and the designation of the service to which he belongs.

(2) The free mail privilege shall be applicable only to personal letter mail in its usual and generally accepted form, including messages on post cards, sent by members in the active service of the Armed Forces.

(3) Such letters, including messages on post cards, weighing not to exceed one ounce and endorsed by the sender for air service, shall be given air mail transportation, whenever practicable. Letters intended for air service should be marked or endorsed "Air Mail" or "Via Air Mail" in a prominent manner above the address and below the word "Free."

(Pub. Law 609, 81st Cong.)

[SEAL] J. M. DONALDSON,
Postmaster General.

[F. R. Doc. 50-6907; Filed, Aug. 7, 1950; 8:48 a. m.]

TITLE 42—PUBLIC HEALTH

Chapter I—Public Health Service, Federal Security Agency

Subchapter D—Grants

PART 55—GRANTS AND LOANS FOR WATER POLLUTION CONTROL

SUBPART B—PLANNING GRANTS

Sec.
55.21 Definitions.
55.22 Application.
55.23 Assurances.
55.24 Records of expenditures.
55.25 Approval of project by State agency.
55.26 Approval by the Surgeon General.
55.27 Notification of approval of projects.
55.28 Notification of approval of planning grants.
55.29 Payment of planning grants.
55.30 Expenditure of planning grants.
55.31 Disposition of balances.

AUTHORITY: §§ 55.21 to 55.29 issued under sec. 9, 62 Stat. 1160, 33 U. S. C. 466h.

§ 55.21 *Definitions.* All terms used in this subpart which are defined in the Water Pollution Control Act and not defined in this section shall have the meaning given to them in such act. As used in this subpart, the following terms shall have the meaning indicated hereinbelow:

(a) *Federal act.* The Water Pollution Control Act (Pub. Law 845, 80th Cong., approved June 30, 1948, 62 Stat. 1155), as modified by Reorganization Plan No. 16 effective May 24, 1950.

(b) *Surgeon General.* The Surgeon General of the Public Health Service.

(c) *State.* A State, the District of Columbia, Hawaii, Alaska, Puerto Rico, or the Virgin Islands.

(d) *Municipality.* A county, city, town, district, or other political subdivision created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes.

(e) *State water pollution agency.* The agency of the State which has comprehensive powers for enforcing the State laws relating to the abatement of water pollution. If there is no one agency of the State which has such powers, the term means the State health authority.

(f) *Interstate agency.* An agency of two or more States having powers or duties pertaining to the abatement of pollution of waters.

(g) *Applicant.* Any State, municipality, or interstate agency, or two or more thereof acting jointly, which files an application for financial aid under the act and this subpart.

(h) *Application.* The document or documents, including amendments thereto and communications in support thereof, filed by an applicant requesting financial aid under the act and this subpart.

(i) *Project.* A proposed treatment work to prevent the discharge of untreated or inadequately treated sewage or other waste into waters in or adjacent to any State, including the proposed preparation of engineering reports, plans, and specifications in connection therewith.

(j) *Planning grant.* A grant under section 8 (c) of the Federal act to assist in financing the cost of engineering, architectural, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures and other action preliminary to construction of projects.

(k) *Treatment works.* Any of the various devices used in the treatment of sewage or industrial waste of a liquid nature, including the necessary intercepting sewers, outfall sewers, pumping, power, and other equipment, and their appurtenances, and any extensions, improvements, remodeling, additions, and alterations thereof. The term "intercepting sewer" as used in the foregoing definition includes sewers designed for intercepting or receiving and carrying the flow from any other sewer or sewers discharging directly into natural watercourses.

(l) *Comprehensive program.* A comprehensive program for a designated drainage basin area prepared or adopted by the Surgeon General pursuant to section 2 (a) of the Federal act for eliminating or reducing the pollution of interstate waters and tributaries thereof and improving the sanitary condition of surface and underground waters.

§ 55.22 *Application.* Any State, municipality or interstate agency may file with the Surgeon General, through the appropriate State water pollution agency or agencies on forms prescribed by the Surgeon General, an application for approval of a project and to obtain a planning grant. Applications for planning grants may be approved for $20,000 or 33⅓ percent of the estimated reasonable costs of the action preliminary to the construction of the project, whichever amount is smaller. No planning grant shall be made for any work which, prior to the date of approval of such planning grant, has been completed or has been specifically included in a contract under which the work is required to be performed.

§ 55.23 *Assurances.* The Surgeon General or his designee shall not approve a planning grant without assurances from the applicant that such applicant will comply with such reasonable conditions as the Surgeon General may prescribe.

§ 55.24 *Records of expenditures.* An applicant to whom a grant under this subpart is made shall maintain and make available for purpose of audit accurate records of all expenditures incurred in carrying out the purposes for which the grant is made.

§ 55.25 *Approval of project by State agency.* The appropriate State water pollution agency or agencies when forwarding applications to the Surgeon General, in addition to indicating approval or disapproval of such projects, may make recommendations for priorities together with reasons therefor.

§ 55.26 *Approval by the Surgeon General.* The Surgeon General or his designee shall consider any such application where the project has been approved by the appropriate State water pollution agency or agencies and submitted in accordance with regulations. In determining whether to approve projects and make grants, the Surgeon General or his designee shall, in addition to giving full consideration to the State's recommendation for priorities, give consideration to the following:

(a) The public benefits to be derived from its construction taking into account the extent of the water pollution problem, and giving highest priority to projects whose construction will aid in furthering the national defense effort;

(b) The relation of such construction to a comprehensive program in an area where such program has been prepared or adopted;

(c) The financial status of the applicant, the probability that treatment works will be constructed within a reasonable time, and any other factors appropriate to the carrying out of the purposes of the Federal act.

The approval of a project for a planning grant shall not constitute approval for purposes of a loan under section 5 of the Federal act.

§ 55.27 *Notification of approval of projects.* The applicant and the appropriate State water pollution agency or agencies shall be notified of approval

(or disapproval) and of the scope of the project approved. Such approval of a project does not constitute the approval of a planning grant.

§ 55.28 *Notification of approval of planning grants.* The applicant and the appropriate water pollution agency or agencies shall be notified of approval of a planning grant, the amount of the grant awarded, the purposes for which the grant is being made, and the conditions on which it is being made.

§ 55.29 *Payment of planning grants.* Upon completion of the work for which the planning grant is made and upon the filing of a report with the Surgeon General and the appropriate State water pollution agency or agencies covering such completed work, there shall be certified to the Secretary of the Treasury for payment to the applicant a sum equal to 33⅓ percent of the actual cost of the work for which the grant is made. The sum so certified to the Secretary of the Treasury for payment shall not exceed the amount awarded by the grant unless specifically authorized by the Surgeon General or his designee. In any event such amount shall not exceed $20,000.

§ 55.30 *Expenditure of planning grants.* Amounts paid to an applicant shall be paid as reimbursement for costs incurred solely in the carrying out of the purposes for which the grant was approved.

§ 55.31 *Disposition of balances.* In the event that planning grant funds paid under the Federal act shall amount to more than 33⅓ percent of the actual costs in carrying out the work for which the grant is made, such amount in excess of 33⅓ percent shall be returned to the Treasurer of the United States.

This subpart shall become effective upon publication in the FEDERAL REGISTER.

Dated: July 20, 1950.

[SEAL] LEONARD A. SCHEELE,
Surgeon General.

Approved: August 1, 1950.

JOHN L. THURSTON,
Acting Federal Security Administrator.

[F. R. Doc. 50-6906; Filed, Aug. 7, 1950; 8:48 a. m.]

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

PART 3—RADIO BROADCAST SERVICES

STANDARDS OF GOOD ENGINEERING PRACTICE CONCERNING STANDARD BROADCAST STATIONS

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 1st day of August 1950;

The Commission having under consideration the table of Average Sunrise and Sunset Times, section 26 of the Commission's Standards of Good Engineering Practice Concerning Standard Broadcast Stations (13 F. R. 3023), and particularly the times therein given for Youngstown, Ohio; and

It appearing, that the Commission on August 20, 1948, issued a public notice (Docket No. 9134; FCC 48-1994; 13 F. R. 5011) which explained the basis of calculation of the above table; and that the table gives the sunset time for the month of August for Youngstown, Ohio, as 5:15 p. m., e. s. t., but that the correct time should be 7:30 p. m., e. s. t.; and

It further appearing, that the public notice and procedure provided for by section 4 (a) of the Administrative Procedure Act is impracticable and unnecessary as a prerequisite to the correction of this error, since the correction is of a minor nature and is due to a typographical mistake and increases the over-all operating hours of the stations to which the time is applicable, and since it is desirable that this correction be effected prior to August 1, 1950; and that for the same reasons the correction may be made effective immediately; and

It further appearing, that authority for this correction is vested in the Commission by sections 4 (i), 303 (c), (f), and (r) of the Communications Act of 1934, as amended;

It is ordered, That, effective immediately, the Commission's table of Average Sunrise and Sunset Times, section 26 of the Commission's Standards of Good Engineering Practice Concerning Standard Broadcast Stations, is amended to indicate a sunset time of 7:30 p. m., e. s. t., at Youngstown, Ohio, during the month of August.

(Sec. 4, 48 Stat. 1066, as amended; 47 U. S. C. 154)

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-6931; Filed, Aug. 7, 1950; 8:51 a. m.]

TITLE 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

[Corrected S. O. 860]

PART 95—CAR SERVICE

SUBSTITUTION OF REFRIGERATOR CARS FOR BOX CARS, TO TRANSPORT FRUIT AND VEGETABLE CONTAINERS AND BOX SHOOKS

At a session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D. C., on the 2d day of August A. D. 1950.

It appearing, that fruit and vegetable containers, box shooks and other packing material are now moving in box cars from origins in the States of Washington, Oregon or California, to destinations in the State of California; that refrigerator cars are moving empty from the same points of origin to the same points of destination and that the substitution of refrigerator cars for such box cars will release the box cars for other and more essential transportation; in the opinion of the Commission an emergency exists requiring immediate action to prevent a shortage of equipment. It is ordered, that:

§ 95.860 *Substitution of refrigerator cars for box cars, to transport fruit and vegetable containers and box shooks.* (a) (1) Except as provided in paragraph (a) (2), common carriers by railroad subject to the Interstate Commerce Act transporting fruit and vegetable containers, box shooks or other packaging or packing materials, in carloads, from origins located in the States of Washington, Oregon or California, to destinations in the State of California may, at their option, furnish and transport not more than three (3) refrigerator cars in lieu of each box car ordered, subject to the carload minimum weight which would have applied if the shipment had been loaded in a box car.

(2) On shipments on which the carload minimum weight varies with the size of the car,

(i) Two (2) refrigerator cars may be furnished in lieu of one (1) box car ordered of a length of 40' 7", or less, subject to the carload minimum weight which would have applied if the shipment had been loaded in a box car of the size ordered.

(ii) Three (3) refrigerator cars may be furnished in lieu of one (1) box car ordered of a length of over 40' 7", but not over 50' 7", subject to the carload minimum weight which would have applied if the shipment had been loaded in a box car of the size ordered.

(b) *Application.* The provisions of this order shall apply to shipments moving in intrastate commerce as well as to those moving in interstate commerce.

(c) *Effective date.* This order shall become effective at 12:01 a. m., August 4, 1950.

(d) *Expiration date.* This order shall expire at 11:59 p. m., October 31, 1950, unless otherwise modified, changed, suspended or annulled by order of this Commission.

(e) *Rules and regulations suspended.* The operation of all rules and regulations insofar as they conflict with the provisions of this order is hereby suspended.

(f) *Announcement of suspension.* Each of such railroads, or its agent, shall publish, file, and post a supplement to each of its tariffs affected hereby, in substantial accordance with the provisions of Rule 9 (k) of the Commission's Tariff Circular No. 20 (§ 141.9 (k) of this chapter) announcing the suspension or any of the provisions therein.

It is further ordered, that this order and direction shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of this order be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D. C., and by filing it with the Director, Division of the Federal Register.

(Sec. 12, 24 Stat. 383, as amended; 49 U. S. C. 12. Interprets or applies sec. 1, 24 Stat. 379, as amended; 49 U. S. C. 1)

By the Commission, Division 3.

[SEAL] W. P. BARTEL,
Secretary.

[F. R. Doc. 50-6923; Filed, Aug. 7, 1950; 8:51 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR, Part 6]

MIGRATORY BIRDS AND CERTAIN GAME MAMMALS

FURTHER AMENDED NOTICE OF PROPOSED RULE MAKING

Pursuant to section 4 (a) of the Administrative Procedure Act, approved June 11, 1946 (60 Stat. 237), and the authority contained in section 3 of the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755, 16 U. S. C. 704), as amended, notice was given on May 5, 1950 (15 F. R. 2804), that the Secretary of the Interior proposed to adopt amendments to the regulations under the aforesaid act establishing specifications relating to open seasons and shooting hours, bag limits, possession and transportation of migratory game birds and also in connection with the issuance of permits for scientific and propagating purposes. On July 7, 1950 (15 F. R. 4316–4318), further specific proposals with respect to seasons on doves (white-winged, mourning or turtle) and rails and gallinules were set out in an amended notice. After consultation with State conservation agencies and others concerning these proposed seasons, it appears that certain minor changes in the schedule included in the notice of July 7 should be made and that notice thereof should be given as far in advance of opening dates as is possible.

In lieu of the previously indicated dates for the opening of the seasons on mourning doves in Georgia, Virginia, and Nebraska, it now is proposed that the opening dates for such seasons be as follows: Georgia, December 17; Virginia, October 2; and Nebraska, September 1.

In lieu of the previously indicated dates for the opening of the seasons on rails and gallinules in certain States, it now is proposed that such seasons open as follows: Florida, September 15; Maryland, New Jersey, Rhode Island, and Virginia, September 1; and Massachusetts, October 20.

In lieu of the previously indicated dates for the season on mourning doves in Idaho, it now is proposed that the season will be September 1 to September 15, both dates inclusive, in all of the State except Bannock, Bear Lake, Caribou, Bingham, Bonneville, Clark, Jefferson, Fremont, Madison, and Teton Counties.

As previously noted, the detailed regulations will be published on or about August 26. Those specifying the open seasons on doves, rails and gallinules, waterfowl and coot in Alaska, scoter, eider, and old squaw ducks in northeastern States, and related matters will become effective September 1, 1950. Those specifying the open seasons, bag limits and possession of waterfowl and coot will become effective October 1, 1950.

OSCAR L. CHAPMAN,
Secretary of the Interior.

AUGUST 3, 1950.

[F. R. Doc. 50-6950; Filed, Aug. 7, 1950; 8:52 a. m.]

DEPARTMENT OF AGRICULTURE

Production and Marketing Administration

[7 CFR, Part 918]

HANDLING OF MILK IN MEMPHIS, TENN., MARKETING AREA

NOTICE OF RECOMMENDED DECISION AND OPPORTUNITY TO FILE WRITTEN EXCEPTIONS WITH RESPECT TO A PROPOSED MARKETING AGREEMENT AND ORDER

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of the recommended decision of the Assistant Administrator, Production and Marketing Administration, United States Department of Agriculture, with respect to a proposed marketing agreement and a proposed order, regulating the handling of milk in the Memphis, Tenn., marketing area. Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington 25, D. C., not later than the close of business the 15th day after publication of this decision in the FEDERAL REGISTER. Exceptions should be filed in quadruplicate.

Preliminary statement. A public hearing, on the record of which the proposed marketing agreement and the proposed order were formulated was called by the Production and Marketing Administration, United States Department of Agriculture, following receipt of a petition filed by the Mid-South Milk Producers Association, Memphis, Tenn., and was held at Memphis, Tenn., March 20 through March 24, 1950, and March 27 through March 29, 1950, pursuant to notice duly published in the FEDERAL REGISTER (15 F. R. 1112, Doc. 50-1659). The period from March 29, 1950, to May 2, 1950, was reserved for interested parties to file briefs on the record.

The major issues developed at the hearing were concerned with the following matters:

(1) Whether the handling of milk produced for the Memphis, Tenn., marketing area is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce in milk or its products;

(2) Whether marketing conditions justify the issuance of a milk marketing agreement or order;

(3) The extent of the marketing area;

(4) What milk should be covered for pricing purposes;

(5) The classification of milk;

(6) The level of class prices to be paid and the methods for determining such prices;

(7) The type of pool to be used and a base rating system of distributing returns to producers; and

(8) Administration provisions.

Findings and conclusions. The following findings and conclusions on the material issues decided herein are hereby made upon the basis of the record of the hearing:

(1) The handling of milk produced for the Memphis, Tennessee, marketing area is in the current of interstate commerce and directly burdens, obstructs, or affects interstate commerce in milk and its products.

The record clearly indicates that the proposed marketing area obtains its regular producer milk supply from producers located in several adjoining states. The percentage of the total receipts of milk from producers, by states, is estimated as follows:

	Percent
Tennessee	57.5
Mississippi	36.5
Kentucky	5.4
Arkansas	.6

When the regular producer milk supply is inadequate to meet the requirements of the market, additional milk is imported from the Chicago area. In addition it has been necessary to import substantial quantities of skim milk from Paducah, Kentucky. Other milk products such as nonfat dry milk solids and condensed skim milk are imported by handlers in interstate shipments for use in reconstituted products offered for sale in the Memphis marketing area or for use in manufactured products.

Handlers distribute milk and milk products in interstate commerce in West Memphis, Helena, and Blytheville, all located in the State of Arkansas and in various towns in Mississippi, from routes extending as far south as Clarksdale, Mississippi.

Surplus milk or cream accumulated in the flush production months is usually diverted to manufacturing plants located in Tennessee, Mississippi, Kentucky, and Illinois. The products manufactured from this surplus include cheese, butter, and evaporated milk which are sold on the national market.

The evidence shows that in addition to the receipt of interstate shipments and the distribution of substantial quantities of milk and milk products to points outside the State of Tennessee, there is competition for the local supply of milk by milk distributors located outside of the State.

From the foregoing it is clear that a substantial volume of the milk in the Memphis, Tennessee, marketing area is moved physically in interstate commerce in the form of milk, cream, and manufactured dairy products and that the handling of milk in the market directly burdens, obstructs, and affects interstate commerce in milk and its products.

(2) Marketing conditions in the Memphis, Tennessee, marketing area justify the issuance of a marketing agreement or order.

In the Memphis market the supply of milk cannot be adjusted readily to changes in market conditions. Moreover, in order to assure an adequate supply at all times (both the supply and consumption of milk vary from day to day and season to season without relation to each other), a quantity of milk should always be delivered to the mar-

ket in excess of that which is used in fluid form. Finally, milk is produced by a large number of individual producers who, because of their inability to control supplies (no one of them produces a significant share of the total market supply) and because the markets for their milk are limited by the pattern of transportation routes and the application of local sanitation regulations, find themselves in a relatively weak bargaining position. All of these factors contribute to an inherent instability in the marketing and pricing of milk in this market. As a result farmers make long run outlays for capital equipment upon which they are not assured reasonable returns. Under these conditions farmers are subject to economic exploitation and they may not, for this reason, be able to continue to supply adequate quantities of pure and wholesome milk for this marketing area.

Fluid milk markets which are unstable engender a situation of recurrent shortages and excesses of supply. When the market is adequately supplied, the necessary reserve (i. e., the amount over and above that used as fluid milk which is delivered to the market in order to assure against shortages arising from the daily and seasonal variation in supplies and consumption) tends to depress prices below a level where farmers can obtain an adequate return on their capital investment. These periods of excess supply can continue for a long time because the costs involved are largely fixed costs and farmers are impelled to continue the production of milk as long as they are able to receive anything more than the direct costs of production. Finally, however, if prices continue at low levels supplies of milk will become less than adequate to the market's needs because farmers are unable under these conditions to replace depleted capital investments. It is then necessary to increase prices to especially high levels in order to induce new suppliers to make the capital outlays which are necessary to produce milk in accordance with health regulations. The production of milk under these unstabilized conditions is more costly than the production of milk in adequate quantities for a stabilized market. The regulatory plan as contained herein is designed to stabilize marketing conditions in a situation where a market (in order to assure adequate supplies of milk daily) is carrying a supply in excess of fluid requirements.

The inherent instability of milk markets is intensified wherever there is a lack of uniformity in the buying, pricing, and pooling plans of handlers.

At the present time there is no uniform plan for establishing prices to producers in the Memphis marketing area. The milk of approximately 620 producers for whom 2 producer cooperative associations are acting as bargaining agents is sold to handlers on a classified basis. The milk of the remaining producers, approximately 380, is purchased by certain handlers without regard to the use of the milk. Under the marketing plan operated by the Mid-South Milk Producers Association and the Madison County Milk Producers Association, cooperating handlers purchase producer milk in accordance with the use of such milk. The returns from the sale of milk are then distributed to producers by means of a "base quota system." Since the development of this marketing plan some handlers have gradually withdrawn their support of the plan. This action has made it difficult, if not impossible, to administer the plan effectively. For example, one large handler in September 1948 inaugurated his own base rating plan for paying producers. Under this plan the daily base of most producers is determined by computing the average daily deliveries of such producer during the months of September, October, November, January, February, and March. The record shows that exceptions to the general plan were made in the case of certain producers. During the base forming months the receipts of producer milk by this handler have been considerably below his Class I requirements as evidenced by the supplemental purchases of Class I milk from the Mid-South Milk Producers Association. Evidence shows that this handler does not adjust the bases of producers from month to month in accordance with the use made of base deliveries nor does he adjust the base price for the use made of base deliveries. It is evident from these facts that his cost of milk is not related to the use made of such milk nor comparable with the cost of milk to competing handlers.

Another handler distributing Class I and Class II milk in the marketing area purchases only Class I milk from the Madison County Milk Producers Association. There is no arrangement under these two purchase plans whereby the returns from the sale of surplus production of producer milk in the market is equitably distributed among member and nonmember producers of the cooperative associations. Under the marketing arrangements in the market the cooperative associations have assumed the responsibility of the disposal of seasonal surpluses and have assumed the responsibility of purchasing supplementary supplies of Class I milk.

It is concluded that a marketing agreement or order is needed to establish uniform prices to handlers for milk in accordance with the use made of such milk and to distribute the returns from the sale of milk equitably among producers. The issuance of a marketing agreement or order would provide producers with the marketing information which is necessary for the efficient marketing of their milk. The auditing of the utilization of milk in the plants of all handlers and the checking of weights and tests of producer milk will aid in establishing and maintaining orderly marketing conditions by assuring producers that they will receive a proper accounting for their milk.

(3) The marketing area should include all the territory within the boundaries of the Cities of Memphis and Jackson, Tennessee.

Two proposals for defining the marketing area were made prior to the hearing. The Mid-South Milk Producers Association proposed the territory within the boundaries of the City of Memphis. The Madison County Milk Producers Association proposed that the area should also include the City of Jackson, Tennessee. This proposal was also supported by the Mid-South Milk Producers Association.

There are nine handlers who purchase milk from producers and distribute milk on wholesale and retail routes in Memphis, one of whom bottles a substantial quantity of milk for sale in the City of Jackson in competition with three handlers who purchase milk from producers and distribute milk on wholesale and retail routes in the City of Jackson and adjacent territory. In addition there is another handler who purchases milk from producers at Martin, Tennessee, and disposes of it in bulk to a handler in the City of Memphis.

The quality of milk distributed in the Cities of Memphis and Jackson, Tennessee, which have a population of 351,000 and 38,000, respectively, is regulated by local municipal health ordinances patterned after the U. S. Public Health Service ordinance. Evidence shows that the provisions and enforcement of the ordinances for the two cities are comparable. In the procurement of Grade A producer milk in the State of Tennessee handlers in the Cities of Memphis and Jackson compete for such supplies.

At the hearing it was proposed by one handler that the marketing area include other towns surrounding Memphis where milk is distributed by Memphis handlers. Such a proposal cannot be considered on the basis of this record since other parties who would be affected by such a proposal were not notified that such areas would be considered at the hearing.

(4) The milk to be priced under the order should be that which is produced under a dairy farm inspection permit issued by the appropriate health authority of the marketing area, for distribution as Grade A milk, and which is regularly delivered to a plant distributing such milk on routes in the marketing area or to a plant supplying milk so approved to such a distributing plant. The record indicates that the milk distributed in the marketing area is inspected by the health authorities of the Cities of Memphis and Jackson, which require fluid milk and certain other fluid milk and cream products to be of Grade A quality.

To implement this conclusion the order should define a "fluid milk plant" as a plant, approved by the appropriate health authorities of the marketing area, which is used during the month for the receipt and processing or packaging of producer milk, and from which all or a portion of such milk is disposed of as Class I milk in the marketing area to wholesale or retail outlets, including plant stores. The definition should also include a plant at which producer milk is received and cooled for shipment to a plant described above. The record indicates at least one such plant is supplying a Memphis handler with Grade A producer milk. The fluid milk plant definition should not include plants approved by the appropriate health authorities of the marketing area to furnish milk to handlers during periods of emergency or shortage if such plants do not receive milk from dairy farmers holding a dairy farm inspection permit issued by such authorities. Inclusion of such

plants would be beyond the intended scope of the order and would involve pricing milk not primarily produced for the marketing area.

"Handler," to whom the regulatory provisions of the order are applicable, should be defined as an operator of a "fluid milk plant" in his capacity as such; a producer-handler; or a cooperative association with respect to milk which it causes to be diverted to a nonfluid milk plant for the account of such association. At times of flush production, proprietory handlers may not be in a position to accept milk from all of their producers, or to arrange for its diversion for their account, even though the milk of these producers may be needed to supply the market later in the year. The provision that a cooperative association be defined as a handler with respect to milk which it causes to be diverted to a nonfluid milk plant will permit these producers to share in the market so that their milk will be available to the market when it is needed. The inclusion of a producer-handler in this definition is necessary in order to permit the market administrator to obtain such reports from producer-handlers as he deems necessary.

"Producer" should be defined as any person, except a producer-handler, who produces milk in conformity with the Grade A requirements of the appropriate health authorities in the marketing area and whose milk is received at a fluid milk plant or diverted by a handler to a nonfluid milk plant. The health authorities of the marketing area require that dairy farmers producing milk for sale as Grade A milk in the market shall hold a dairy farm inspection permit issued by such authorities. This definition is not intended to include those producers who hold such a permit but whose milk is not permitted temporarily to be received at a fluid milk plant for bottling purposes. Producer-handlers (those who normally distribute only milk of their own production) should not be included in this definition. In other sections of the order it is proposed that such persons shall not share with producers the benefits of their sales. Producer-handlers normally sell to handlers only milk that is surplus to their own operations and should not share with producers in the Class I sales of the handlers which are regularly supplied by other producers.

(5) It is concluded that two classes of milk should be established.

Class I milk should be all skim milk and butterfat disposed of in fluid form as milk, skim milk, buttermilk, flavored milk, flavored milk drinks, cream, and any other product required by the appropriate health authority in the marketing area to be made from Grade A milk. It should also include all skim milk and butterfat not specifically accounted for as Class II milk.

Class II milk should include all skim milk and butterfat used to produce any product other than those defined as Class I milk; disposed of for livestock feed; and in shrinkage of producer milk up to 2 percent of the receipts of milk from producers. In the matter of shrinkage of producers' milk, producers proposed the maximum of 2 percent. The evidence indicates that this maximum is considered to be representative of practical plant operation in the market. Any shrinkage in excess of this maximum should be classified in Class I milk as unaccounted for milk. No maximum was proposed or has been adopted with respect to the amount of shrinkage on other source milk allowed as Class II since such milk would be deducted from the lower available use classification under the allocation provisions.

The classification plan herein decided upon results in milk and those products required to be derived from milk produced under the sanitary standards of the appropriate health authority in the marketing area being placed in Class I. Such products as butter, cheese, condensed and evaporated milk, and other milk products, which need not be made from graded milk and which normally are made from such milk only at times when a handler's supply of graded milk is in excess of his needs for graded milk, are placed in Class II.

The health ordinances in effect in the marketing area require that milk disposed of for consumption as milk and milk used to produce skim milk, buttermilk, flavored milk, flavored milk drinks, and cream be derived from milk produced in conformity with the sanitary standards of the local ordinances. In accordance with these ordinances, milk producers in the local supply area are inspected by the local health authorities and those producers in the area who meet the standards are given certificates of permission to ship to the marketing area. Normally only inspected producers are allowed to provide the milk disposed of as milk, cream, skim milk, buttermilk, flavored milk, and flavored milk drinks. In times of shortage, however, it has been the practice to allow the importation of milk, skim milk, and cream from sources outside the local milkshed. Such importations must meet sanitary standards similar to those applying to milk produced in the local supply area.

A major principle of milk classification plans is that uses of milk with similar economic values are placed in the same class. Because the milk and all the products of milk which it is concluded should be placed in Class I must be derived from milk that meets the standards of the local sanitary ordinances (even though upon occasion milk and milk products may be imported from outside the local supply area), the costs of producing this milk, insofar as the sanitary standards have any affect, are the same for all uses. Moreover, it is the practice in this market to ship in as whole milk in fluid form all milk from producers needed in the marketing area for milk, cream, and other ordinance products. Cream for use in the marketing area is not separated at country points but is made at plants in the marketing area. Some cream, however, is shipped into the market during times of shortage from outside the local supply area. Because all milk produced within the supply area for use as milk, cream, and other ordinance products must meet the same sanitary standards and is shipped in the form of whole fluid milk to the marketing area, it is concluded that all milk used in milk, cream, and other ordinance products has the same economic value and, hence, is placed in the same class, i. e., Class I.

Milk consumers have an interest in the classification system. If all products which because of economic circumstances should be placed in Class I and thereby bear their share of supporting the uniform price to producers, are not placed in Class I, but are priced lower, then the Class I price must be at a higher level than otherwise would be necessary. Thus, if cream and skim milk drinks are not placed in Class I, consumers who use products of Class I, e. g., fluid milk, are required, insofar as the Class I price is a factor in resale prices, to pay higher prices for milk in order that the consumers of cream and other products not in Class I may purchase these products at lower prices. In effect such a system requires consumers of whole milk to subsidize consumers of cream and byproducts.

All this is not to say that where economic conditions in a particular milk market compel differences in the price of milk as compared to cream and byproducts that the classification should not be different. But economic conditions in the market appear to demonstrate, as indicated above, that the values for fat and skim milk when disposed of to consumers in the form of milk, cream, and certain byproducts are equal and hence such products must be placed in Class I.

Provision is made for the reclassification of skim milk and butterfat when it is found that the original classification was incorrect. This provision is necessary in order to determine the ultimate classification of milk which may be used to produce an intermediate product which in turn is disposed of in fluid form such as buttermilk and milk drinks. It also provides for the ultimate classification of milk which may be carried over as inventory and temporarily placed in Class II for purposes of determining a value for such milk for the month within which such milk was received.

In the case of transfers or diversions of milk the responsibility for correct classification is placed on the handler who first receives the milk from producers. In the event milk is transferred without adequate proof of utilization such milk should be classified as Class I milk. Milk transferred by a handler to another handler or to a nonhandler may be classified in a class agreed upon by the parties involved, except in the case of transfers from a fluid milk plant from which no Class I milk is disposed of on wholesale or retail routes in the marketing area to fluid milk plants from which Class I milk is so disposed of in the marketing area. The record shows that there is such a plant located approximately 125 miles from the City of Memphis which supplies bulk milk to a bottling plant located in the City of Memphis. The operators of these two plants would be handlers under the terms of the order. Milk so transferred

between plants of this type should be classified on an agreed basis so long as the resulting uniform price for the transferring handler does not exceed the uniform price computed for the transferee handler. If this is not done transfers could be made to the advantage of far-out producers and to the disadvantage of nearby producers.

It was suggested at the hearing that the order specify the class in which transfers of milk would be classified and that the market administrator would subsequently determine the utilization of the milk. The market administrator would then reconcile the differences between the handlers involved in his billing to such handlers for the utilization value of milk received from producers. The practical application of such a provision under the type of pool adopted does not provide the flexibility necessary to secure the most economical utilization of milk.

The order further provides that skim milk and butterfat received by handlers from sources other than producers shall be allocated to the lowest use in the handler's plant. This is to prevent other source milk from displacing the milk of producers who constitute the regular source of supply of the market. A proposal was made that in the allocation of other source skim milk sufficient producer skim milk should remain in Class II milk so that the butterfat content of producer milk classified as Class II milk would not be more than 40 percent even though the result would allocate skim milk in other source milk to Class I milk. Under the system of pricing adopted in this order inequities could arise between handlers in the cost of milk through the adoption of this proposal.

(6) The Class I price should be fixed in relation to the general level of the value of milk used to produce manufactured dairy products. To achieve this end a basic price should be adopted which will reflect this general level and to which differentials should be added to reach the desired Class I price. Such price should vary in terms of charges of 40 cents per hundredweight in the basic price and the relationship of receipts of producer milk to the sales of Class I milk.

It is concluded that the basic price should be the highest of (a) the average price paid by a group of 18 northern condenseries, (b) a formula based on the price of 92-score butter at Chicago and the price of nonfat dry milk solids f. o. b. plants in the Chicago area, or (c) the average price paid by specified manufacturing plants located in or adjacent to the Memphis milkshed.

The purpose of such basic price is to take into account the national economic factors underlying the price of milk for manufacturing uses which influence the local market prices. Evidence was introduced to show that handlers compete with local manufacturing plants in the procurement of milk. Generally, prices paid for milk used for fluid purposes have been related to prices paid for milk used for manufacturing purposes. Production and marketing of milk for each type of manufacturing outlet are subject to many of the same economic factors. Since the market for most manufactured products is country-wide, prices of manufactured dairy products reflect, to a large extent, changes in general economic conditions affecting the supply of and demand for milk. For these reasons fluid milk markets have used butter, nonfat dry milk solids, and cheese prices, or the prices paid by condenseries with differentials over these basic or manufacturing prices to establish fluid milk prices. These differentials are needed to cover the cost of meeting quality requirements in the production of market milk, transportation costs to the fluid market, and to furnish the necessary incentive to get such milk produced.

Basic prices similar to those proposed herein are contained in the Federal milk orders issued pursuant to the act for the Chicago, Illinois, and Paducah, Kentucky, marketing areas. The record shows that substantial quantities of supplementary supplies of milk, skim milk (including condensed skim milk and nonfat dry milk solids), and cream have been purchased from the Chicago and Paducah milksheds. Such supplies are commingled with producer milk sold in bottled form in competition with producer milk. Furthermore, milk from producers is purchased by handlers in the Memphis marketing area in competition with handlers in the Paducah marketing area. Under these circumstances, the basic price should reflect manufacturing values which influence the prices paid by Chicago and Paducah handlers for milk. The inclusion of the prices paid by the 18 condenseries and the formula price based on the price of butter and nonfat dry milk solids will reflect the manufacturing values which influence the Chicago and Paducah prices. Historically, the average price paid for milk by manufacturing plants in the Memphis area has been below the average of the prices paid by northern condenseries, or the price resulting from the proposed butter and nonfat dry milk solids formula. It is felt, however, that should conditions in the Memphis area at some time result in local manufacturing plants paying prices somewhat higher than normal in relation to the general level of manufacturing milk prices, the Class I price for the Memphis marketing area should be maintained above the local price of ungraded milk by at least the amount of the proposed differentials.

The testimony indicates that general economic conditions and business activity in the Memphis marketing area together with increasing population point to a continued good demand for fluid milk and milk products. The record indicates also that wages of farm labor and prices of building material, machinery, equipment, and supplies for the production of milk continue at relatively high levels. While there has been some decline in the cost of feed grains and hay in the past year, no substantial reduction in production costs of Grade A milk as compared with ungraded milk is apparent. A substantial investment is necessary if a producer is to provide facilities to meet the requirements for the production of milk qualified for sale in the marketing area. The expense of properly handling and cooling milk and maintaining the milk barn and milk house is substantially greater for producing Grade A milk than for producing ungraded milk.

To reflect the additional costs involved in the production and marketing of Grade A milk and to furnish the necessary incentive for farmers to produce a sufficient supply of such milk for the marketing area, the prices of Grade A milk must be maintained at a substantially higher level than the prices of milk produced for manufacturing purposes.

The Class I price for milk containing 4.0 percent butterfat should be $5.08 per hundredweight during the months of September through February and $4.68 per hundredweight during the months of March through August whenever the basic price is between $3.20 and $3.60 per hundredweight. Increases or decreases of 40 cents per hundredweight in the basic price range will be reflected in an increase or a decrease of a like amount in the Class I price. An average Class I differential is applied over the basic price of $1.68 during the fall and winter months and $1.28 during the spring and summer months, or $1.48 average for the year. In computing the Class I price for the current month, the basic price for the previous month would be used in order that producers and handlers may know, on or before the 5th of the month the price for Class I milk.

Prices should be maintained at approximately their present levels as a means of assuring the market an adequate supply of pure and wholesome milk for the coming fall and winter months. Historically, the market has been short of milk during the short production season and the record indicates that there is considerable unrest and uncertainty among producers concerning the market for milk in the coming months. With the basic price plus the proposed differential for Class I milk together with the United States Department of Agriculture's purchase program supporting the price of milk and butterfat nationally, it is anticipated that the Class I price would remain at approximately the present level. However, in view of the uncertainty and unrest among producers and their lack of understanding of the operations of a formula price, it is concluded that the Class I price should not be less than $5.08 per hundredweight from the effective date of the order through the month of February 1951.

Provision is made for a reduction of 40 cents per hundredweight in the average Class I differential applied over the basic price during the months of March through August. Handlers of the Memphis marketing area regularly dispose of large quantities of Class I milk to outlets adjacent to the marketing area. These outlets are also served regularly by unregulated distributors who are normally able to obtain supplies of milk for fluid uses at considerably reduced prices during these months. In order to enable handlers to compete more readily with such distributors for Class I sales, it is

appropriate that the price of Class I milk be reduced during such months.

In arriving at a Class I price in a market where an order is being promulgated, it is difficult to determine the relative long term influence which such price would have upon the volume of supply and sales of milk. This is particularly true in a market where new methods of determining prices and paying producers are being instituted. In view of this it is concluded that for any month, after the pricing provisions of this order have been in effect for 13 months, the Class I price should be increased 40 cents per hundredweight if the total volume of milk received from producers by all handlers during the 12 months immediately preceding the month prior to the month for which the class price is being computed is less than 110 percent of the total Class I sales of all handlers during such 12 month period. Likewise, if the total volume of milk received from producers by all handlers during such period is more than 125 percent of the total Class I sales of all handlers the Class I price should be reduced 40 cents per hundredweight. This will provide for changes in the Class I price differential in accordance with current supply and demand conditions without the necessity of a hearing procedure.

An analysis of the production and sales figures for the years of 1948–49 indicates that an annual production of milk for the Memphis marketing area of approximately 15 percent greater than the annual sales of Class I milk was needed in order to supply the market with sufficient producer milk for Class I use during the short production month. In view of the high butterfat content in milk received from producers and the relatively large demand for skim milk in Class I products, it is questionable whether it is economical for producers to attempt to supply the market with sufficient milk to meet all Class I demands in the shortest production months. It may be more economical for the market to import small amounts of milk for Class I use during the short production months rather than to be faced with burdensome surpluses during the spring months. Therefore, it is concluded that the Class I price should not be increased because of the supply-demand adjustment until the market has had less than 10 percent of the receipts of milk from producers utilized in Class II on an annual basis. Likewise, no adjustment downward resulting from the supply-demand factor should be made unless it is obvious that the market is over-supplied with milk. In this connection the higher limit of the bracket, i. e., 125 percent, appears to be reasonable.

Class II milk prices should be based on the average of prices paid for milk by nearby milk manufacturing plants. The prices paid by the plants selected are representative of the value of manufacturing milk in the Memphis milkshed. Since handlers compete with these plants in the sale of products included in Class II milk and at times dispose of some of their surplus milk to one or another of these plants, it is necessary that producer milk going into such products be priced at a similar level in order to assure a market for producer milk delivered in excess of fluid requirements. The plants named as a basis for fixing the Class II price are those of the Pet Milk Company at Mayfield, Kentucky, and Kosciusko, Mississippi; the Carnation Company at Tupelo, Mississippi; the Borden Company at Starkville, Mississippi; the Collierville Dairy Products Company at Collierville, Tennessee; the Coldwater Dairy Products Company at Coldwater, Mississippi; and the Olive Branch Cheese Company at Olive Branch, Mississippi.

The class prices computed and publicly announced by the market administrator under the terms of the order would be those for milk containing 4.0 percent butterfat. The skim milk and butterfat in milk received from producers is separated, classified in the respective classes. The class prices for each handler would be adjusted by a butterfat differential in accordance with the average test of producer milk classified in such class. Such differential for Class II milk should be on the basis of the value of 92-score butter in the Chicago market plus 20 percent. This differential is in line with the general level of the price of butterfat for manufacturing uses. With regard to Class I milk, such differential should be on the basis of the value of 92-score butter in the Chicago market plus 25 percent which reflects the higher valued use of butterfat for fluid uses.

The price to handlers for Class I milk received at plants located 40 miles or more from the City Hall in Memphis should be adjusted to reflect the value of such milk at the various plants. The economic value of milk for fluid uses decreases as the distance at which it is produced increases in relation to the terminal market which in this instance is Memphis. This is due largely to the cost of transporting milk in fluid form to the market. It is therefore concluded that the Class I price to handlers for milk received from producers at plants located 40 miles or more from Memphis should be reduced as follows: 40 miles but less than 50 miles, 17 cents; 50 miles but less than 60 miles, 18 cents; 60 miles but less than 70 miles, 19 cents; and, for each 10 mile zone thereafter an additional 1 cent. These location differentials would result in a reduction of 25 cents per hundredweight in the price of Class I milk received at the Martin, Tennessee, plant which amount corresponds to the pricing arrangement practiced at the present time by the handler operating such plant. It is not appropriate to apply these location differentials to Class II milk since such milk can be disposed of to manufacturing plants located throughout the milkshed.

Testimony was received at the hearing on a proposal to reduce the price of Class II milk diverted to cheese plants by an amount which varies with the distance of such cheese plant from the City of Memphis. The record indicates that in the assembly of fluid milk for the market, milk haulers pass by or near to several manufacturing plants in the milkshed on their routes to the city plants. It should be possible therefore to deliver milk to such manufacturing plants with a saving in transportation cost. Furthermore, the record shows that manufacturing plants receiving diverted milk pay the same price for such milk as they pay for milk received from their farmers. Under these circumstances, it is concluded that the proposed allowance is not justified.

It was suggested at the hearing that class prices be established on the basis of milk containing 3.5 percent butterfat and that handlers should be charged for Class I milk disposed of as whole milk on the basis of minimum standard tests even though such milk contained less than the minimum butterfat specified in such standards. It appears that the objectives sought through adoption of the above proposals would be accomplished by the adoption of certain provisions of the order, such as skim milk and butterfat accounting and class butterfat differentials to handlers.

(7) The "individual-handler" type of pool should be established in this order for the purpose of distributing returns from the sale of milk among producers. Under the individual-handler pooling arrangement producers delivering to each handler receive a uniform price based upon such handler's utilization of milk.

The record indicates that the Class II operations of handlers in the marketing area are small in relation to the total operations of such handlers and in relation to the manufacturing operations carried on by handlers in the majority of other markets of this size. Because of the relatively small volume of Class II operations the uniform prices of individual handlers should not vary substantially. Because of an adjustment between prices paid to producers who are members of a cooperative association and those who are not members (see below) substantial equity in the distribution of returns among producers can be achieved in this market under the individual-handler pool arrangement. The additional mechanics and procedures of the market-wide pool are thus not necessary and the inherent difficulty of market-wide pools of defining the milk to be included is avoided.

The principal objective of a pooling system in an order is to distribute the returns from the sale of milk equitably among producers. This is also one of the functions of cooperative associations representing producers in a market. However, in cases such as Memphis, where all of the producers are not members of the cooperative association, the returns from the sale of milk by the cooperative association are distributed equitably among the producers represented by the cooperative association but the total returns from the sale of all milk in the market may not be distributed equitably among all producers. The record indicates that the cooperative associations have not only assumed the responsibility for the importation of supplementary supplies of milk for fluid uses but have also assumed the burden for disposal of seasonal surpluses. In this instance the effects of the cooperative associations' removing or diverting surplus milk to manufacturing plants are to raise the uniform price to

the nonmember producers whose milk remains in the handler's plant. Had the handler diverted all of the surplus in his plant to manufacturing channels, the returns from the sale of milk by such handler would be distributed equitably among his producers. In order to accomplish this result, it is concluded that member producers should receive at least the same percentage of a handler's Class I sales during the months of April through July as was purchased by such handler from the cooperative association during the months of October through January. In the event a handler purchases, during any of the months of April through July, a smaller percentage of his Class I sales from producers who are members of a cooperative association than the monthly average percentage of such purchases from member producers during the preceding period of October through January, a provision is made whereby the returns to producers (members and nonmembers) of such handler will be shared proportionately in the same manner as though such handler had continued to receive milk from the same group of producers. If an equivalent amount of milk were not purchased from the cooperative association by another handler or a nonhandler for Class II use there would be no inequity among producers and the provisions should not apply since such member producers would not be penalized by being paid for a disproportionate share of the Class II sales of the market.

In the distribution of the returns from the sale of milk among producers, a base rating plan is incorporated to encourage the production of a more level supply of milk throughout the year. Although there is some indication of improvement in the seasonal pattern of production in recent months, the deliveries of milk by producers during the war years was more uneven than for the period of 1938–43. This unevenness was due largely to an increase in the rate of turnover of producers supplying the market during the years of 1943–46 and to the conditions influenced by the war effort to obtain maximum production of milk which deemphasized the level production programs in effect in fluid markets. Furthermore, the low level of production in relation to the Class I sales in Memphis resulted in an average price to producers of approximately the Class I price during all months of each year for the period of 1943–46. In recent months the local supply of milk has shown some increase in relation to the Class I sales thereby reducing the average price of milk to producers, particularly in the spring months, and the rate of turnover of producers in the market is decreasing.

A proposal was made for a base rating plan. A base rating plan has wide support among producers in this market. Base rating plans are a means of distributing returns from the sale of milk among producers in a way which tends to even out seasonal variation in milk deliveries. Under the plan provided for herein new bases would be established each year on the basis of total deliveries made by each producer during the months of shortest production, i. e., October through January. The market administrator would compute the base of each producer from whom each handler received milk during the base period of October through January and notify each producer of his established base on or before the 20th day following the close of the base period. The bases so established would be used in making payments to producers during the months of greatest production, i. e., April through July. Deliveries of base milk during these months would receive the highest available classification and deliveries in excess of base milk would receive the lowest classification.

It is necessary to set forth certain rules for the handling of established bases which will assure their use in accordance with the intent of the plan. Since a base would be established for each producer at the plant of the handler to whom he delivered milk during the base period, it is necessary to provide for the transfer of base to another handler in the event a producer transfers deliveries from one handler to another. The rules should provide also that the established base of a producer may be transferred to another producer. Base may be retained by a producer in case he moves his dairy herd from one farm to another. In the case of a landlord and tenant relationship, the landlord would be entitled to the entire base to the exclusion of the tenant if the landlord owns the entire herd, or the tenant would be entitled to the entire base to the exclusion of the landlord if the tenant owns the entire herd. If the herd is jointly owned by the tenant and landlord, the base would be divided between the joint owners according to ownership of the herd when such relationship is terminated. If a producer begins shipping milk to the market during the months of April through July without an established base, he would receive the excess price until August 1. Such a producer may obtain a base by transfer of established base from another producer. During the period of August through March, he would receive the uniform price the same as all other producers, and, during the period of October through January, he would establish a base for the following months of April through July. These rules should assure the workability of the plan without placing undue hardship upon any producer.

(8) Certain other provisions should be adopted in order to carry out administratively the purposes of the regulation.

(a) *Administrative assessments.* Each handler should be required to pay to the market administrator, as his pro rata share in the costs of administration of the order, 4 cents per hundredweight, or such amount not to exceed 4 cents per hundredweight as the Secretary may from time to time prescribe, on receipts of (1) milk from producers and (2) other source milk classified as Class I milk.

The market administrator is required to verify the utilization of all milk received, and therefore other source milk, as well as producer milk, should bear an appropriate share of the administrative cost. Substantial quantities of other source milk are received by handlers, some of which is sold in Class I uses at certain times during the year. An assessment on other source milk used as Class I milk will appropriately apportion the expenses among handlers. The testimony indicates that some handlers receive other source milk for manufacturing purposes. Application of the assessment to all the other source milk received by such a handler could place him at some disadvantage in disposing of manufactured dairy products in competition with persons not regulated by the order.

Both handlers and producers recognize that the market administrator must have the necessary funds to enable him to administer properly the terms of the order. A rate of 5 cents per hundredweight was proposed by producers and was supported by handlers at the hearing. In view of the anticipated volume of milk to be regulated, a maximum of 4 cents per hundredweight should be adequate to guarantee a sufficient administrative income. Office expenses are usualy relatively high at the beginning of a program. In the event a lesser amount proves upon experience to be sufficient for proper administration, provision is made to enable the Secretary to revise the assessment accordingly within the 4-cent maximum without the necessity of amending the order.

Some objection was made at the hearing to the proposed rate of 5 cents per hundredweight because of fear that consumers would be taxed in the form of higher retail prices to pay for the cost of administering an order. While the act does not give the Secretary authority to fix retail prices it does require that minimum prices to be paid to producers should be in the public interest. In this connection, it is worthy of notice that the Class I price of $5.08 per hundredweight which handlers would be required to pay to producers plus the administrative assessment charge of 4 cents per hundredweight would be identical to the price currently paid by handlers for Class I milk.

(b) *Deductions for marketing services.* Provision should be made for the performance by the market administrator of marketing services for producers who do not belong to a cooperative association performing such services. These services should include sampling, testing, and checking the weights of milk delivered and furnishing market information to such producers. Such provision is specifically authorized by the act, and the proponents of the order proposed that in making payments to producers 0.07 cent per hundredweight should be deducted with respect to the milk of such nonmember producers to cover expenses in connection with the services to be rendered. The cost of performing these services will vary with the volume of milk involved at any given time and the number of producers delivering to each plant. The proponents who have had experience with sampling, testing, and checking of weights expressed the opinion based on such experience that these services could not be performed for less than the 7 cent rate under current con-

ditions. Should experience prove that a lesser rate is sufficient, provision is made whereby the Secretary may reduce the assessment to an amount which he determines is necessary without the necessity of amending the order. In the event that any qualified cooperative association of producers is determined to be performing such services for its members the market administrator in making payments to the cooperative association for milk received from its members shall not make the deductions for marketing services. Such an association in making payments to its members may make such deductions as are authorized by the members of the association.

(c) *Reports and records.* All accounting, reports, price computations and payments should be made on a monthly basis. The term "month" is used throughout the order in its ordinary and usual meaning as one of the twelve divisions of the year. However, the use of this term within the text of the order shall not be construed to prevent the issuance by the Secretary of amendments to the order to be effective on any day of a month. In view of this, it is determined that it is not necessary to include a definition of "delivery period."

Provisions should be included in the order for the purpose of requiring handlers to maintain adequate records and to make reports with respect to receipts, utilization, and payments for milk. Such records and reports are necessary for the purpose of determining proper classification, pricing, and payment relative to the milk of producers. Producers proposed that reports of receipts and utilization of milk be filed with the market administrator on or before the 9th day after the end of the month. It is necessary to allow sufficient time following the month for the compiling and filing of such reports by the handler. On the other hand, the payments to producers should not be unduly delayed. It is concluded that the 8th day following the end of the month will allow handlers sufficient time to file such reports and will permit payments to producers by the 15th day after the end of the month.

(d) *Audits.* Provisions should be included in the order to provide for the auditing of each handler's reports and records to insure producers the proper returns for milk as provided for in the order. It is necessary that the handler also provide whatever facilities are necessary to verify reports or to ascertain the correct information regarding the receipts and utilization of milk and payments to producers.

(e) *Payments to producers.* Provision should be made for the computation of a uniform price for each handler and the payment to producers on a monthly basis. Such payment should be made to individual producers by the market administrator on or before the 15th day after the end of the month, or to a cooperative association on or before the 13th day after the end of the month. Producers proposed an advance payment covering milk delivered during the first 15 days of the month to be made on or before the last day of the month. Such an advance payment was proposed to be made only upon request of the individual producer. The record indicates that producers are customarily paid on the 15th day after the end of the month but handlers have made advance payments to some producers upon individual requests. The plan proposed herein would allow such a practice to continue by permitting handlers to deduct such advances from the money due producers on the 15th day after the end of the month. Dates for the filing of handler reports and for the payment by handlers to the market administrator of the utilization value of producer milk, less money advances and other deductions authorized in writing by individual producers, have been adjusted in a manner which will permit the market administrator to make payments to producers within the date prescribed.

In making payments to producers, an appropriate location differential should be deducted from the uniform prices and the base prices to be paid by a handler for producer milk received at a fluid milk plant located 40 miles or more by shortest hard surface highway distance from the City Hall in Memphis, Tennessee. Such rate of deduction is the same as is applied for Class I milk received by such handler at such plant. This deduction will result in approximately equal prices for milk at the farm whether the milk is delivered to the country plant or directly to a plant in Memphis.

One handler objected to the market administrator collecting the utilization value of milk from handlers and making payments to producers on the basis that such a procedure was uneconomical as well as impractical in settling disputes between producers and handlers. It was contended that it takes less time to write a check to a producer than it does to relay the information to a second party who in turn would write the check. It was argued that mistakes may arise in handler-producer transactions and in such instances the producer naturally looks to his handler for the correction of such mistakes or errors. It was also contended that under the method of payment proposed, it would be necessary for the handler to notify the market administrator who in turn would have to communicate with the producer in order to correct a mistake.

Under the plan proposed herein the handler would furnish the market administrator with a statement for each producer showing among other things the total pounds and the average butterfat content of milk delivered by the producer and the amount or rates per hundredweight of each deduction claimed by the handler including money advancements to such producer. Both producers and handlers proposed that such a statement be given to each producer each month. The statement could be filled out in triplicate showing the above information and given to the market administrator each month in lieu of a producer pay-roll report which is normally required to be filed by a handler when payments are required to be made direct to producers by the handler. The market administrator could fill in the uniform price on the statement and complete the extensions to determine the net amount of payment due the producer. Such calculations would normally be performed by the market administrator in verification of handlers' payments to producers. After such extensions have been completed one copy of the statement would accompany the check mailed to producers. In the case of producers who are members of a cooperative association collecting payment for milk of its members, a copy of the statements for such producers accompanied by a check for the total amount due for all such milk would be mailed to the cooperative association. The second copy of the completed statement would be returned to the appropriate handler and the third copy would be retained by the market administrator for his files.

The writing of checks to producers by the market administrator would not involve more time than would be required to verify cancelled checks or cash receipts in the handler's plant as a means of assuring payments of minimum prices to producers. The number of mistakes normally made in the extensions on the statements and the writing of individual checks is relatively small and inconsequential. Other errors or disputes between handlers and producers could continue to be settled in the normal manner. Other handlers did not object to the proposed plan. It is concluded that it would not be uneconomical in this market for each handler to make a lump sum payment to the market administrator of the money due his producers and for the market administrator to make payment to such producers. This will preserve the confidential character of the membership rolls of a cooperative association. Furthermore, it will facilitate the operations of the adjustment of prices to be paid to producers who are members and those who are not members of a cooperative association. Such payments by handlers to the market administrator should be made on or before the 12th day after the end of the month.

(f) *Other administrative provisions.* The other provisions of the order are of general administrative nature which are common to all orders and have been found from experience to be necessary for proper and efficient administration. They provide for the selection of a market administrator, define his powers and duties, prescribe the information to be reported by handlers each month and set forth the rules to be followed by the market administrator in making the computations required by the order. They also prescribe the length of time that records must be retained and provide a plan for liquidation of the order in the event of its suspension or termination.

It is also provided that a "producer-handler" shall be exempt from all the regulatory provisions of the order except that requiring the filing of reports as requested by the market administrator. The producer-handler maintains control of his milk until ultimate disposition and in this respect his situation is different from the regular producer whose milk is marketed through a han-

dler. On the other hand, such persons frequently change their status. It is necessary, therefore, for the market administrator to have authority to require reports from the producer-handler in order to verify his status as well as to supplement other market information.

The order provides also for the retention of necessary records by handlers and for the ultimate termination of obligations. It is necessary for handlers to retain records in order to prove the utilization of milk and the payments made to producers. It is necessary that these records be kept for a substantial period of time since some transactions with respect to the handling of the producers' milk are not completed and audited until several months after producers have delivered the milk to handlers' plants. Detailed records of this kind soon assume tremendous physical proportions and become burdensome for this reason. It is necessary that a definite time period be provided within which handlers must maintain their records and after which they will be relieved of so doing. The order should provide that handlers shall retain records for three years after the end of the delivery period or month to which such records relate. In terms of the volume of records which would be retained and the types of transactions involved in disposing of milk, the retention of records for three years is concluded to be a reasonable requirement. If litigation is in progress, it may be necessary to require records to be retained for a longer period and provision should be made for this contingency.

The order should provide for the termination of obligations to handlers after a reasonable period of time has elapsed. Without such a provision handlers may file claims which, because the period involved might extend back over many years, could be in substantial amounts. This creates uncertainties which could endanger the stability of the market and lead to serious inequities. The order should provide that any obligation to pay a handler shall terminate two years after the month in which the milk was received if an underpayment is claimed, or within two years after payment was made if a refund is claimed, unless within such period of time the handler files a petition, pursuant to section 8c (15) (A) of the act, claiming such money. Handlers also need the protection of provisions terminating their obligations to make payments. Since handlers cannot be forewarned always as to contingent liabilities, it is extremely difficult and burdensome for them to make adequate provisions therefor by setting up reserves or by taking other precautionary measures. The obligation of any handler to pay money should, except under certain extraordinary conditions, such as litigation, terminate two years after the last day of the month during which the market administrator receives the handler's report of utilization of the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. It is concluded that in general a period of two years is a reasonable time within which a market administrator should complete his auditing and inspection work and render any billings for money due under the order. Provisions are necessary also, as contained in the order included in this decision, to meet such contingencies as failure of the handler to submit required books and records and to deal with situations where fraud or willful concealment of information may be involved.

It was proposed that if a handler fails to make the required reports or payments, his name may be publicly announced by the market administrator, unless otherwise directed by the Secretary. Such a provision is provided for by the act and it is concluded that its adoption will facilitate the enforcement of the terms of the order.

General findings. (a) The proposed marketing agreement and the order and all of the terms and conditions thereof will tend to effectuate the declared policy of the act;

(b) The parity prices of milk as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply of and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The proposed order will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which a hearing has been held.

Proposed findings and conclusions. Briefs were filed on behalf of producers and certain handlers. The briefs contained proposed findings of fact, conclusions and argument with respect to the proposals discussed at the hearing. Every point covered in the briefs was carefully considered along with the evidence in the record in making the findings and reaching the conclusions hereinbefore set forth. To the extent that such suggested findings and conclusions contained in the briefs are inconsistent with the findings and conclusions contained herein the request to make such findings or to reach such conclusions are denied on the basis of the facts found and stated in connection with the conclusions in this decision.

Recommended marketing agreement and order. The following order is recommended as the detailed and appropriate means by which these conclusions may be carried out. The proposed marketing agreement is not included because the regulatory provisions thereof would be the same as those contained in the order:

DEFINITIONS

§ 918.1 *Act.* "Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.).

§ 918.2 *Secretary.* "Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the United States authorized to exercise the powers or to perform the duties of the said Secretary of Agriculture.

§ 918.3 *Department of Agriculture.* "Department of Agriculture" means the United States Department of Agriculture or any other Federal agency authorized to perform the price reporting functions specified in this part.

§ 918.4 *Person.* "Person" means any individual, partnership, corporation, association, or other business unit.

§ 918.5 *Cooperative association.* "Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

§ 918.6 *Memphis, Tennessee, marketing area.* "Memphis, Tennessee, marketing area," hereinafter called the "marketing area" means all the territory within the boundaries of the cities of Memphis and Jackson, Tennessee.

§ 918.7 *Fluid milk plant.* "Fluid milk plant" means any milk plant approved by the appropriate health authority in the marketing area, and used during the month for (a) the receipt and processing or packaging of producer milk, all or a portion of which is disposed of as Class I milk in the marketing area to wholesale or retail outlets, including plant stores; or (b) the receipt and cooling of producer milk for shipment to a plant described in paragraph (a) of this section.

§ 918.8 *Nonfluid milk plant.* "Nonfluid milk plant" means any milk manufacturing, processing, or bottling plant other than a fluid milk plant.

§ 918.9 *Handler.* "Handler" means: (a) Any person in his capacity as the operator of a fluid milk plant; (b) a producer-handler; or (c) any cooperative association with respect to milk of producers diverted by it from a fluid milk plant to a nonfluid milk plant for the account of such cooperative association.

§ 918.10 *Producer.* "*Producer*" means any person, except a producer-handler, who produces milk under a dairy farm inspection permit issued by the appropriate health authority in the marketing area and whose milk is permitted to be used for consumption as milk in the marketing area, which milk is: (a) received at a fluid milk plant, or (b) diverted from a fluid milk plant to a nonfluid milk plant: *Provided*, That any such milk so diverted shall be deemed to have been received by the handler for whose account it was diverted.

§ 918.11 *Producer milk.* "Producer milk" means all skim milk and butterfat in milk produced by a producer which is purchased or received by a handler either

directly from producers or from other handlers.

§ 918.12 *Other source milk.* "Other source milk" means all skim milk and butterfat other than that contained in producer milk.

§ 918.13 *Producer-handler.* "Producer-handler" means any person who produces milk under a dairy farm permit issued by the appropriate health authority in the marketing area and who processes milk from his own production, and distributes all or a portion of such milk within the marketing area as Class I milk, but who receives no milk from producers.

MARKET ADMINISTRATOR

§ 918.20 *Designation.* The agency for the administration of this part shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

§ 918.21 *Powers.* The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To receive, investigate, and report to the Secretary complaints of violations;

(c) To make rules and regulations to effectuate its terms and provisions; and

(d) To recommend amendments to the Secretary.

§ 918.22 *Duties.* The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including but not limited to the following:

(a) Within 45 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon such duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of the funds provided by § 918.97 the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses, except those incurred under § 918.96, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for in this part, and, upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Submit his books and records to examination by the Secretary and furnish such information and reports as may be requested by the Secretary;

(g) Audit all reports and payments by each handler by inspection of such handler's records and of the records of any other handler or person upon whose utilization the classification of skim milk or butterfat for such handler depends;

(h) Publicly announce, at his discretion unless otherwise directed by the Secretary by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, within 5 days after the date upon which he is required to perform such acts, has not made reports pursuant to §§ 918.30 and 918.31 or payments pursuant to § 918.90;

(i) Publicly announce, by posting in a conspicuous place in his office and by such other means as he deems appropriate and notify each handler in writing on or before the 6th day of each month, the minimum price for Class I milk computed pursuant to § 918.51 (a) and the Class I butterfat differential computed pursuant to § 918.52 (a), both for the current month, and the minimum price for Class II milk computed pursuant to § 918.51 (b) and the Class II butterfat differential computed pursuant to § 918.52 (b), both for the previous month;

(j) Notify each handler in writing on or before the 11th day of each month the amount of the net obligation of such handler for milk received from producers during the previous month. Such notification shall show the amount and the value of milk in each class; the amount and the value of overage; and the amount necessary to correct errors discovered by the market administrator in the verification of reports of such handler of his receipts and utilization of skim milk and butterfat for previous months;

(k) Publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate and notify each handler in writing:

(1) On or before the 13th day after the end of each of the months of August through March the uniform price and the location differential for each handler computed pursuant to §§ 918.71 and 918.93, respectively, and the butterfat differential computed pursuant to § 918.92; and

(2) On or before the 13th day after the end of each of the months of April through July the uniform prices for base milk and for excess milk and the location differential for each handler computed pursuant to §§ 918.72 and 918.93, respectively, and the butterfat differential computed pursuant to § 918.92; and

(l) Prepare and disseminate to the public such statistics and such information as he deems advisable and as do not reveal confidential information.

REPORTS, RECORDS, AND FACILITIES

§ 918.30 *Reports of receipts and utilization.* On or before the 8th day after the end of each month each handler, except a producer-handler, shall report to the market administrator in the detail and on forms prescribed by the market administrator as follows:

(a) The quantities of skim milk and butterfat contained in milk received from producers;

(b) The quantities of skim milk and butterfat contained in receipts from other handlers;

(c) The quantities of skim milk and butterfat contained in receipts of other source milk (except Class II products disposed of in the form in which received without further processing or packaging by the handler);

(d) The utilization of all skim milk and butterfat required to be reported pursuant to this section;

(e) Such other information with respect to receipts and utilization as the market administrator may prescribe.

§ 918.31 *Other reports.* (a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler shall report to the market administrator in detail and on forms prescribed by the market administrator, as follows:

(1) On or before the 8th day after the end of the month, the correct name and address of each producer, the total pounds of milk received from each producer, the number of days on which milk was received from each producer, the amount of any deductions authorized in writing by the producer to be made in making payments to such producer, and the average butterfat content of the milk received from each producer.

(2) Upon request of the market administrator, the information described in subparagraph (1) of this paragraph together with such other information as the market administrator may prescribe for prior calendar months included in the period beginning with October 1950 to the effective date of this part.

(3) On or before the first day other source milk is received, such handler's intention to receive such milk and on or before the last day such milk is received, his intention to discontinue receipt of such milk.

§ 918.32 *Records and facilities.* Each handler shall maintain and make available to the market administrator during the usual hours of business such accounts and records of his operations and such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipts and utilization of all producer milk and other source milk;

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream, and milk products handled; and

(c) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream, and milk products on hand at the beginning and end of each month.

§ 918.33 *Retention of records.* All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to

begin at the end of the calendar month to which such books and records pertain: *Provided*, That if, within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c (15) (A) of the act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 918.40 *Skim milk and butterfat to be classified.* All skim milk and butterfat received within the month by a handler and which is required to be reported pursuant to § 918.30 shall be classified by the market administrator pursuant to the provisions of §§ 918.41 through 918.46.

§ 918.41 *Classes of utilization.* Subject to the conditions set forth in §§ 918.43 and 918.44, the classes of utilization shall be as follows:

(a) Class I milk shall be all skim milk (including reconstituted skim milk) and butterfat disposed of in the form of milk, skim milk, buttermilk, flavored milk, flavored milk drinks, cream, and any other product required by the appropriate health authority in the marketing area to be made from Grade A milk, and all skim milk and butterfat not specifically accounted for under paragraph (b) of this section.

(b) Class II milk shall be all skim milk and butterfat (1) used to produce any product other than those specified in paragraph (a) of this section, (2) disposed of for livestock feed, (3) in shrinkage up to 2 percent of receipts from producers, and (4) in shrinkage of other source milk.

§ 918.42 *Shrinkage.* The market administrator shall allocate shrinkage over a handler's receipts as follows:

(a) Compute the total shrinkage of skim milk and butterfat for such handler; and

(b) Pro rate the resulting amounts between such handler's receipts of skim milk and butterfat in producer milk and in other source milk.

§ 918.43 *Responsibility of handlers and reclassification of milk.* (a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat can prove to the market administrator that such skim milk or butterfat should be classified otherwise.

(b) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect.

§ 918.44 *Transfers.* Skim milk or butterfat disposed of by a handler either by transfer or diversion from a fluid milk plant shall be classified:

(a) As Class I milk if transferred or diverted in the form of milk, skim milk or cream, to another fluid milk plant unless utilization in Class II is mutually indicated in writing to the market administrator by both handlers on or before the 8th day after the end of the month within which such transaction occurred: *Provided*, That the skim milk or butterfat so assigned to Class II shall be limited to the amount thereof remaining in Class II in the plant of the transferee-handler after the subtraction of other source milk pursuant to § 918.46, and any additional amounts of such skim milk or butterfat shall be assigned to Class I: *Provided further*, That if either or both handlers have received other source milk, the skim milk or butterfat so transferred or diverted shall be classified at both plants so as to allocate the greatest possible Class I utilization to producer milk: *And provided further*, That the amount of skim milk or butterfat transferred or diverted from a fluid milk plant described in § 918.7 (b) to a fluid milk plant described in § 918.7 (a) shall not be classified in Class I to the extent that the resulting uniform price for the transferring handler shall be higher than the resulting uniform price for the transferee-handler.

(b) As Class I milk if transferred to a producer-handler in the form of milk, skim milk or cream.

(c) As Class I milk if transferred or diverted in the form of milk, skim milk, or cream to a nonfluid milk plant, except that of a producer-handler, unless the following conditions are met:

(1) The handler claims classification in Class II;

(2) The market administrator is permitted to audit the books and records showing the utilization of all skim milk and butterfat received at such nonfluid milk plant, for the purpose of verification; and

(3) An amount of skim milk and butterfat not less than that so transferred or diverted was used in Class II: *Provided*, That the skim milk and butterfat so assigned to Class II shall be limited to the amount thereof in Class II in such nonfluid milk plant and any additional amounts of skim milk and butterfat so transferred or diverted shall be assigned to Class I.

§ 918.45 *Computation of the skim milk and butterfat in each class.* For each month, the market administrator shall correct for mathematical and for other obvious errors the report of receipts and utilization submitted by each handler and shall compute the pounds of skim milk and butterfat in Class I milk and Class II milk for such handler.

§ 918.46 *Allocation of skim milk and butterfat classified.* After making the computations pursuant to § 918.45 the market administrator shall determine the classification of milk received from producers as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II the pounds of skim milk determined pursuant to § 918.41 (b) (3);

(2) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk: *Provided*, That if the receipts of skim milk in other source milk are greater than the remaining pounds of skim milk in Class II, an amount equal to the difference shall be subtracted from the pounds of skim milk in Class I;

(3) Subtract from the remaining pounds of skim milk in each class the skim milk received from other handlers according to its classification as determined pursuant to § 918.44 (a);

(4) Add to the remaining pounds of skim milk in Class II the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph; and

(5) If the remaining pounds of skim milk in both classes exceed the pounds of skim milk received from producers, subtract such excess from the remaining pounds of skim milk in series beginning with Class II. Any amount so subtracted shall be called "overage."

(b) Butterfat shall be allocated in accordance with the same procedure outlined for skim milk in paragraph (a) of this section.

(c) Determine the weighted average butterfat content of the Class I and Class II milk computed pursuant to paragraphs (a) and (b) of this section.

MINIMUM PRICES

§ 918.50 *Basic formula price to be used in determining the Class I price.* The basic formula price to be used in determining the price per hundredweight of Class I milk shall be the highest of the prices computed pursuant to paragraphs (a) and (b) of this section and § 918.51 (b), all for the preceding month.

(a) To the average of the basic or field prices per hundredweight reported to have been paid or to be paid for milk of 3.5 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator or to the Department of Agriculture:

Present Operator and Location

Borden Co., Mount Pleasant, Mich.
Carnation Co., Sparta, Mich.
Pet Milk Co., Hudson, Mich.
Pet Milk Co., Wayland, Mich.
Pet Milk Co., Coopersville, Mich.
Borden Co., Greenville, Wis.
Borden Co., Black Creek, Wis.
Borden Co., Orfordville, Wis.
Borden Co., New London, Wis.
Carnation Co., Chilton, Wis.
Carnation Co., Berlin, Wis.
Carnation Co., Richland Center, Wis.
Carnation Co., Oconomowoc, Wis.
Carnation Co., Jefferson, Wis.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Belleville, Wis.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

add an amount computed by multiplying the butterfat differential computed pursuant to § 918.52 (b) for the month by by 5.

(b) The price per hundredweight computed by adding together the plus values pursuant to subparagraphs (1) and (2) of this paragraph:

(1) To the simple average as computed by the market administrator of

the daily wholesale selling prices (using the midpoint of any price range as one price) per pound of Grade A (92-score) bulk creamery butter per pound at Chicago, as reported by the Department of Agriculture during the month, add 20 percent thereof and multiply by 4.0.

(2) From the simple average as computed by the market administrator of the weighted averages of carlot prices per pound for nonfat dry milk solids, spray and roller process, respectively, for human consumption, f. o. b. manufacturing plants in the Chicago area as published for the period from the 26th day of the preceeding month through the 25th day of the current month by the Department of Agriculture, deduct 5 cents, and multiply by 7.5.

§ 918.51 *Class prices.* Subject to the provisions of §§ 918.52 and 918.53, the minimum prices per hundredweight to be paid by each handler for milk received at his fluid milk plant from producers during the month shall be as follows:

(a) *Class I milk.* The price per hundredweight for Class I milk for the month shall be the amount set forth below for such months opposite the price range within which the basic formula price falls:

Basic formula price range (dollars per hundredweight)	Amount per hundredweight	
	September through February	March through August
Not more than 1.999	$3.48	$3.08
2.00 but not more than 2.399	3.88	3.48
2.40 but not more than 2.799	4.28	3.88
2.80 but not more than 3.199	4.68	4.28
3.20 but not more than 3.599	5.08	4.68
3.60 but not more than 3.999	5.48	5.08
4.00 but not more than 4.399	5.88	5.48
And for each additional 40 cents or fraction thereof.	An additional 40 cents	

Provided, That the Class I price from the effective date of this provision through the month of February 1951 shall not be less than $5.08 per hundredweight: *And provided further,* That for any month after this provision has been in effect for 13 months the Class I price shall be increased 40 cents per hundredweight if the receipts of milk from producers by all handlers, during the 12 months prior to the month immediately preceding the month for which the Class I price is being computed, was less than 110 percent of the total Class I milk disposed of by all handlers during such 12-month period; or the Class I price for any such month shall be reduced 40 cents per hundredweight if the receipts of milk from producers during such 12-month period are more than 125 percent of the total Class I milk disposed of by all handlers during such 12-month period.

(b) *Class II milk.* The average of the basic or field prices reported to have been paid or to be paid for ungraded milk of 4.0 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator or to the Department of Agriculture.

Present Operator and Location

Collierville Dairy Products Co., Collierville, Tenn.
Coldwater Dairy Products Co., Coldwater, Miss.
Olive Branch Cheese Co., Olive Branch, Miss.
Borden Co., Starkville, Miss.
Carnation Co., Tupelo, Miss.
Pet Milk Co., Mayfield, Ky.
Pet Milk Co., Kosciusko, Miss.

§ 918.52 *Butterfat differential to handlers.* If the average butterfat content of producer milk allocated to any class pursuant to § 918.46 is more or less than 4.0 percent there shall be added to the respective class price computed pursuant to § 918.51 for each one-tenth of 1 percent that the average butterfat content of such milk is above 4.0 percent, or subtracted for each one-tenth of 1 percent that such average butterfat content is below 4.0 percent an amount equal to the butterfat differential computed by multiplying the simple average, as computed by the market administrator, of the daily wholesale selling prices per pound (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter at Chicago, as reported by the Department of Agriculture during the period listed below by the applicable factor so listed and dividing the result by 10:

(a) *Class I milk.* Multiply such price reported for the preceding month by 1.25;

(b) *Class II milk.* Multiply such price reported for the current month by 1.20.

§ 918.53 *Location differentials to handlers.* For that portion of milk which is received from producers at a handler's fluid milk plant located 40 miles or more from the City Hall in Memphis, Tennessee, by shortest hard surfaced highway distance, as determined by the market administrator, and which is classified as Class I milk, the prices specified in § 918.51 (a) shall be reduced by the amount per hundredweight set forth in the schedule below for the appropriate distance at which is located the fluid milk plant where such milk was received:

Distance from the City Hall in Memphis (miles):	*Amount per hundredweight (cents)*
40 but less than 50	17
50 but less than 60	18
60 but less than 70	19
Within each 10-mile zone thereafter: an additional 1 cent.	

APPLICATION OF PROVISIONS

§ 918.60 *Producer-handlers.* Sections 918.40 through 918.46, 918.50 through 918.53, 918.70 through 918.72, 918.80 through 918.83, 918.90 through 918.97 shall not apply to a producer-handler.

DETERMINATION OF UNIFORM PRICE

§ 918.70 *Net obligation of each handler.* The net obligation of each handler for milk received during each month from producers shall be a sum of money computed by the market administrator as follows: (a) Multiply the pounds of such milk in each class by the applicable class prices; (b) add together the resulting amounts; (c) add the amounts computed by multiplying the pounds of overage deducted from each class pursuant to § 918.46 by the applicable class prices; and (d) add or subtract, as the case may be, an amount necessary to correct errors discovered by the market administrator in the verification of reports of such handler of his receipts and utilization of skim milk and butterfat for previous months.

§ 918.71 *Computation of the uniform price for each handler.* For each of the months of August through March the market administrator shall compute for each handler the uniform price as follows:

(a) Add to the amount computed pursuant to § 918.70 the amount of location differential pursuant to § 918.93;

(b) Subtract, if the average butterfat content of milk received from producers by such handler is more than 4.0 percent, or add, if such average butterfat content is less than 4.0 percent, an amount computed as follows: Multiply the amount by which the average butterfat content of such milk varies from 4.0 percent by the butterfat differential to producers, and multiply the result by the total hundredweight of such milk;

(c) Add the amount represented by any deductions made pursuant to paragraph (d) of this section for fractions of a cent in computing the uniform price for the preceding month;

(d) Divide the resulting amount by the total hundredweight of milk received from producers by such handler. The result, less any fraction of a cent per hundredweight, shall be known as the uniform price for such handler for milk of 4.0 percent butterfat content, f. o. b. the marketing area.

§ 918.72 *Computation of the uniform price for base milk and for excess milk for each handler.* For each of the months of April through July, the market administrator shall compute for each handler the uniform price for base milk and for excess milk as follows:

(a) Add to the amount computed pursuant to § 918.70 the amount of location differential pursuant to § 918.93;

(b) Subtract, if the average butterfat content of milk received from producers by such handler is more than 4.0 percent, or add, if such average butterfat content is less than 4.0 percent, an amount computed as follows: Multiply the amount by which the average butterfat content of such milk varies from 4.0 percent by the butterfat differential to producers, and multiply the result by the total hundredweight of such milk;

(c) Subtract, for each of the months of April through July, if a handler purchases a smaller proportion of his Class I milk from producers who are members of a cooperative association than the monthly average of such purchases by such handler during the preceding months of October through January, an amount computed as follows:

(1) Compute the difference between the percentage which Class I milk purchased from producers who were members of such cooperative association was of the total Class I milk disposed of by such handler during the months of Oc-

tober through January, and the percentage which Class I milk purchased from member producers of such cooperative association was of the total Class I milk disposed of by such handler during the month;

(2) Multiply this percentage difference by the total Class I milk disposed of by such handler during the month;

(3) Multiply this quantity of milk by the difference between the price of Class I milk and Class II milk for the month: *Provided*, That the total quantity of all handlers to which such difference in price shall apply shall not be greater than the pounds of milk which were received by all handlers from member producers of such cooperative association during the month, and which were classified as Class II milk: *And provided further*, That during any month when the preceding proviso applies to more than one handler the quantities of milk for each handler to be multiplied by such difference in price shall be reduced pro rata until the total of such quantities is equal to the total pounds of milk which were received by all handlers from member producers of such cooperative during the month, and which were classified as Class II milk.

(d) Add, in computing the uniform price of base milk and excess milk diverted by a cooperative association, the sum of the deductions made for the month pursuant to paragraph (c) of this section in computing such uniform prices for all handlers;

(e) Add the amount represented by any deductions made pursuant to paragraphs (h) and (i) of this section for fractions of a cent in computing such uniform prices for the preceding months;

(f) Subject to the conditions set forth in paragraph (g) of this section, compute the value of excess milk received by such handler from producers by multiplying the quantity of such milk by the Class price;

(g) Compute the value of base milk received by such handler from producers by substracting the value obtained pursuant to paragraph (f) of this section from the value obtained pursuant to paragraphs (a) through (e) of this section: *Provided*, That if such resulting value is greater than an amount computed by multiplying the pounds of such base milk by the Class I price such value in excess thereof shall be added to the value computed pursuant to paragraph (f) of this section;

(h) Divide the value obtained pursuant to paragraph (g) of this section by the hundredweight of base milk received by such handler from producers. This result, less any fraction of a cent per hundredweight, shall be known as the uniform price for such handler for base milk of 4.0 percent butterfat content, f. o. b. the marketing area; and

(i) Divide the value obtained pursuant to paragraph (f) of this section, subject to the conditions set forth in paragraph (g) of this section, by the hundredweight of excess milk received by such handler from producers. This result, less any fraction of a cent per hundredweight, shall be known as the uniform price for such handler for excess milk of 4.0 percent butterfat content.

BASE RATING

§ 918.80 *Determination of daily base of each producer.* For the months of April through July of each year, the daily base of each producer shall be an amount of milk computed by the market administrator by dividing the total pounds of milk received from such producer by handlers during the preceding months of October through January by the total number of days in such period.

§ 918.81 *Determination of monthly base of each producer.* For each of the months of April through July of each year, the monthly base of each producer shall be an amount of milk computed by the market administrator by multiplying the daily base of such producer by the number of days on which milk was received during such month from such producer by a handler.

§ 918.82 *Base rules.* (a) A landlord who rents on a share basis shall be entitled to the entire daily base to the exclusion of the tenant if the landlord owns the entire herd. A tenant who rents on a share basis shall be entitled to the entire daily base to the exclusion of the landlord if the tenant owns the entire herd. If the cattle are jointly owned by the tenant and landlord, the daily base shall be divided between the joint owners according to ownership of the cattle.

(b) A producer, whether landlord or tenant, may retain his base when moving his entire herd of cows from one farm to another: *Provided*, That at the beginning of a tenant and landlord relationship the base of the landlord and tenant may be combined and may be divided when such relationship is terminated.

(c) The base of a producer may be moved from one handler to another and may be transferred from such producer to another producer.

§ 918.83 *Announcement of daily bases.* On or before February 20, of each year, the market administrator shall notify each producer of his daily base.

PAYMENTS

§ 918.90 *Payments to market administrator.* On or before the 12th day of each month each handler shall pay to the market administrator an amount equal to such handler's net obligation for the previous month as determined pursuant to § 918.70 less deductions authorized in writing by producers from whom he received milk. The market administrator shall maintain a separate fund in which he shall deposit all payments of handlers received pursuant to this paragraph and out of which he shall make all payments pursuant to § 918.91.

§ 918.91 *Payments to producers.* The market administrator shall pay each producer in the following manner for milk received by a handler from such producer: *Provided*, That if such handler has not made full payment pursuant to § 918.90 for the month the market administrator shall reduce uniformly such payments to such handler's producers and shall complete such payments as soon as the necessary funds are available.

(a) On or before the 15th day after the end of the months of August through March, the market administrator shall pay each producer for milk received by a handler from such producer during the month an amount computed by multiplying the hundredweight of such milk by not less than the uniform price computed for such handler pursuant to § 918.71, subject to the adjustments specified in §§ 918.92, 918.93, and 918.96, and less deductions authorized in writing by such producer.

(b) On or before the 15th day after the end of each of the months of April through July, the market administrator shall pay each producer for milk received by a handler from such producer during the month an amount computed as follows, subject to the adjustments specified in §§ 918.92, 918.93, and 918.96, and less deductions authorized in writing by such producer:

(1) Multiply the hundredweight of base milk received from such producer by such handler by not less than the uniform price for base milk computed for such handler pursuant to § 918.72;

(2) Multiply the hundredweight of excess milk received from such producer by such handler by not less than the uniform price for excess milk computed for such handler pursuant to § 918.72; and

(3) Add together the resulting sums.

(c) In making payments to producers pursuant to paragraphs (a) and (b) of this section the market administrator shall pay, on or before the 2d day prior to the date payments are due to individual producers, to a cooperative association which is authorized to collect payment for milk of its members and from which a request for such payment has been received a total amount equal to not less than the sum of the individual payments otherwise payable to such producers pursuant to this section.

§ 918.92 *Butterfat differential to producers.* In making payment to producers pursuant to § 918.91, there shall be added to or subtracted from, as the case may be, the applicable uniform prices computed pursuant to §§ 918.71 and 918.72 for the handler who received milk from such producer for each one-tenth of one percent of butterfat content above or below 4.0 percent in such milk the amount shown in the schedule below for the butter price range in which falls the simple average of the daily wholesale selling prices per pound (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter at Chicago as reported by the Department of Agriculture during the month:

Butter price range (cents):	*Butterfat differential (cents)*
Not more than 17.500	2
17.50–22.499	2½
22.50–27.499	3
27.50–32.499	3½
32.50–37.499	4
37.50–42.499	4½
42.50–47.499	5
47.50–52.499	5½
52.50–57.499	6
57.50–62.499	6½
62.50–67.499	7

Butter price range (cents)—Continued	Butterfat differential (cents)
67.50–72.499	7½
72.50–77.499	8
77.50–82.499	8½
82.50–87.499	9
87.50–92.499	9½
92.50 and over	10

§ 918.93 *Location differentials to producers.* In making payment to producers pursuant to § 918.91, there shall be deducted from the applicable uniform prices, computed pursuant to §§ 918.71 and 918.72 (h), to be paid by a handler for producer milk received at a fluid milk plant located 40 miles or more from the City Hall in Memphis, Tennessee by the shortest hard surfaced highway distance, as determined by the market administrator, the amount set forth below for the appropriate distance at which is located the fluid milk plant where such milk was received:

Distance from the City Hall in Memphis (miles):	Amount per hundredweight (cents)
40 but less than 50	17
50 but less than 60	18
60 but less than 70	19

Within each 10-mile zone thereafter: an additional 1 cent.

§ 918.94 *Statement to producers.* In making the payments pursuant to § 918.91, the market administrator shall furnish each producer or cooperative association with a statement in such form that it may be retained by the producer or cooperative association which shall show:

(a) The delivery period and the identity of the handler and the producer;

(b) The total pounds and the average butterfat content of milk delivered by the producer;

(c) The minimum rates at which payment to the producer or cooperative association is required under the provisions of §§ 918.91 and 918.92;

(d) The amount or rates per hundredweight of each deduction, together with a description of the respective deductions; and

(e) The net amount of payment to the producer or cooperative association.

§ 918.95 *Adjustment of accounts.* Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due the market administrator from such handler, or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

§ 918.96 *Marketing services*—(a) *Deductions.* In making payments to producers pursuant to § 918.91, the market administrator shall deduct 7 cents per hundredweight or such amount not exceeding 7 cents per hundredweight as may be prescribed by the Secretary, with respect to milk (other than milk of a handler's own production) of those producers for whom the marketing services set forth in paragraph (b) of this section are not being performed by a cooperative association.

(b) *Marketing services to be rendered.* The moneys received by the market administrator pursuant to paragraph (a) of this section shall be used by the market administrator to sample, test, and check the weights of milk received from producers for whom a cooperative association is not performing such services and to provide such producers with market information.

§ 918.97 *Expense of administration.* As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator, on or before the 15th day after the end of the month, 4 cents per hundredweight or such amount not exceeding 4 cents per hundredweight as the Secretary may prescribe with respect to all receipts within the month of (a) milk from producers including such handler's own production, and (b) other source milk which is classified as Class I milk.

§ 918.98 *Termination of obligations.* The provisions of this section shall apply to any obligation under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c (15) (A) of the act, a petition claiming such money.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 918.100 *Effective time.* The provisions of this part or any amendment to this part shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to § 918.101.

§ 918.101 *Suspension or termination.* The Secretary may suspend or terminate this part or any provision of this part whenever he finds this part or any provision of this part obstructs or does not tend to effectuate the declared policy of the act. This part shall terminate in any event whenever the provisions of the act authorizing it cease to be in effect.

§ 918.102 *Continuing obligations.* If, upon the suspension or termination of any or all provisions of this part, there are any obligations thereunder, the final accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

§ 918.103 *Liquidation.* Upon the suspension or termination of the provisions of this part, except this section, the market administrator, or such other liquidating agent as the Secretary may designate, shall if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated, all assets, books and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 918.110 *Agents.* The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

§ 918.111 *Separability of provisions.* If any provision of this part, or its application to any person or circumstances, is held invalid, the application of such provision and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

Filed at Washington, D. C., this 3d day of August 1950.

[SEAL] JOHN I. THOMPSON, *Assistant Administrator.*

[F. R. Doc. 50-6936; Filed, Aug. 7, 1950; 8:52 a. m.]

[7 CFR, Part 919]

[Docket No. AO-220]

HANDLING OF IRISH POTATOES GROWN IN UPSTATE NEW YORK

DECISION WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND ORDER

Pursuant to Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.; 61 Stat. 202, 707; 62 Stat. 1247; 63 Stat. 1051), and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR, Part 900), a public hearing was held at Rochester, New York, beginning on May 15, 1950, pursuant to notice thereof in the FEDERAL REGISTER (15 F. R. 2364), upon a proposed marketing agreement and a proposed marketing order regulating the handling of Irish potatoes grown in the State of New York (except the Counties of Suffolk, Nassau, Queens, Kings, New York, Bronx, and Richmond).

Upon the basis of the evidence introduced at the aforesaid hearing and the record thereof, the Assistant Administrator, Production and Marketing Administration, on July 7, 1950, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision in this proceeding. The notice of the filing of such recommended decision, affording opportunity to file written exceptions thereto, was published in the FEDERAL REGISTER (15 F. R. 4399).

The material issues and the findings and conclusions of the recommended decision set forth in the FEDERAL REGISTER (F. R. Doc. 50-6013; 15 F. R. 4399) are hereby approved, and adopted, and incorporated herein, as the material issues and the findings and conclusions of this decision as if set forth in full herein, and such findings and conclusions are supplemented to the extent hereinafter set forth.

Rulings. Exceptions to the recommended decision were filed, on behalf of the Upstate New York Potato Marketing Agreement Committee, by Harold J. Evans, Chairman of the Committee. Each of such exceptions was fully and carefully considered, together with the evidence in the record, in arriving at the findings and conclusions set forth herein.

It was asserted that changes should be made in the provisions of the proposed marketing agreement and order to require expressly that growers and handlers pay their proportionate shares of the cost of administration on the basis of "potatoes marketed." It is assumed that the term "marketed," as used in the exception, is synonomous with the terms "shipped" and "handled," as such terms are defined in the proposals and refers to the person who first markets, or ships, or handles the potatoes. In § 919.43 it is provided that funds "shall be acquired by the levying on handlers of assessments which shall be at a rate fixed by the Secretary, upon the basis of the committee's recommendation or other available information." It is further provided that "each handler who first ships potatoes shall pay assessments to the committee upon demand, which assessments shall be such handler's pro rata share of the expenses which will be appropriately incurred by the committee during each fiscal year." It appears, in view of the foregoing and the reasons and findings in the recommended decision with respect thereto, that there is no conflict between the terms and provisions of the proposed regulatory program and the implications of the exception insofar as the achievement of the objectives of the exception may be concerned. In addition, the proposed program does not require that assessments be paid on the basis of the quantity of potatoes "indicated by inspection certificates," as this exception seems to infer. The proposals, in § 919.43, clearly state that each handler's share of the expenses "shall be proportionate to the ratio between the total quantity of potatoes handled by him as the first handler thereof, during the applicable fiscal year, and the total quantity of potatoes handled by all handlers, as the first handlers thereof, during the same fiscal year."

An additional exception urges "some flexibility must be provided by which the committee can work out flexible arrangements, with the approval of the Secretary, to effectively control the grade and size of the potatoes marketed." The exception further suggests the use of the following or a similar statement to accomplish this purpose: *"Provided further,* That the committee have responsibility of recommending to the Secretary practical rules concerning the waiver of inspection for small lots of potatoes that cannot be inspected in the usual way." Such authority is already incorporated in the provisions of the said marketing agreement and order through the provision (§ 919.56) of exemption of shipments from regulation when the volume thereof is below such minimum quantities as may be established by the administrative committee with the approval of the Secretary and through the provision relating to inspection and certification contained in § 919.66. Provision is made in such section that "the committee may adopt, subject to the approval of the Secretary, procedures permitting the shipment of potatoes without the required prior inspection thereon; such procedures shall include a requirement that each handler-applicant for a waiver show that he requested shipping point inspection and that the appropriate inspection agency stated that it could not supply reasonably prompt service in connection with such request." Such provision embodies the prerequisites set forth in the aforesaid exception as necessary for efficient operation of the program.

Exception was taken to some of the other findings and conclusions and provisions of the marketing agreement and order contained in the recommended decision. To the extent that the findings and conclusions herein are at variance with any of the exceptions pertaining thereto, such exceptions are denied for the foregoing reasons and on the basis of the findings and conclusions relating to the issues to which the exceptions refer.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement Regulating the Handling of Irish Potatoes Grown in Upstate New York" and "Order Regulating Handling of Irish Potatoes Grown in Upstate New York", which have been decided upon as the appropriate and detailed means of effectuating the foregoing conclusions. The aforesaid marketing agreement and the aforesaid order shall not become effective unless and until the requirements of § 900.14 of the aforesaid rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

It is hereby ordered, That all of this decison, except the attached agreement, be published in the FEDERAL REGISTER. The regulatory provisions of the said agreement are identical with those contained in the attached order, which will be published with this decision.

Done at Washington, D. C., this 3d day of August 1950.

[SEAL] CHARLES F. BRANNAN, *Secretary of Agriculture.*

Order[1] Regulating the Handling of Irish Potatoes Grown in Upstate New York

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

ADMINISTRATIVE COMMITTEE

EXPENSES, ASSESSMENTS, AND BUDGETS

REGULATION

INSPECTION

EXEMPTIONS

MISCELLANEOUS PROVISIONS

AUTHORITY: §§ 919.0 to 919.93 issued under 48 Stat. 31, as amended; 7 U. S. C. 601 et seq.; 61 Stat. 202, 707; 62 Stat. 1247; 63 Stat. 1501.

§ 919.0 *Findings and determinations*—(a) *Findings upon the basis of the hearing record.* Pursuant to Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.; 61 Stat. 202, 707; 62 Stat. 1247; 63 Stat. 1051), and the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR, Part 900), a public hearing was held at Rochester, New York, on May 15–17, 1950, upon a proposed marketing agreement and a proposed marketing order regulating the handling of Irish potatoes grown in the State of New York (except the Counties of Suffolk, Nassau, Queens, Kings, New York, Bronx, and Richmond). Upon the basis of the evidence introduced at such hearing, and the record thereof, it is found that:

(1) All handling of potatoes grown in the production area is either in the current of interstate or foreign commerce, or directly burdens, obstructs, or affects such commerce;

(2) This part, and all of the terms and conditions of this part, will tend to effectuate the declared policy of the act with respect to Irish potatoes produced in the production area specified in this part by establishing and maintaining such orderly marketing conditions therefor as will tend to establish, as prices to the producers thereof, parity prices and by protecting the interest of the consumer (i) by approaching the level of prices which it is declared in the act to be the policy of Congress to establish by a gradual correction of the current level of prices at as rapid a rate as the Secretary deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (ii) by authorizing no action which has for its purpose the maintenance of prices to producers of such Irish potatoes above the parity level, and (iii) by authorizing the establishment and maintenance of such minimum standards of quality and maturity, as will tend to effectuate such orderly marketing of such Irish potatoes as will be in the public interest;

(3) This part regulates the handling of potatoes grown in the production area in the same manner as, and is applicable only to the persons in the respective classes of industrial and commercial activity specified in, a proposed marketing agreement on which a hearing has been held;

(4) This part is limited in its application to the smallest regional production area that is practicable, consistent with carrying out the declared policy of the act; and the issuance of several orders applicable to any subdivision of the production area specified in this order would not effectively carry out the declared policy of the act; and

(5) The terms and provisions of this part prescribe, so far as practicable, such different terms, applicable to different parts of the production area, as are necessary to give due recognition to the differences in production and marketing of potatoes grown in the production area.

Order relative to handling. It is, therefore, ordered that on and after the effective time of this part the handling of potatoes, as defined in this part, shall be in conformity to and in compliance with the terms and conditions of this part; and the terms and conditions of this part are as follows:

DEFINITIONS

§ 919.1 *Secretary.* "Secretary" means the Secretary of Agriculture of the United States, or any other officer, or employee of the United States Department of Agriculture, who is, or may hereafter be authorized to exercise the powers and to perform the duties of the Secretary of Agriculture.

§ 919.2 *Act.* "Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.; 61 Stat. 202, 707; 62 Stat. 1247; 63 Stat. 1051).

§ 919.3 *Person.* "Person" means an individual, partnership, corporation, association, or any organized group or business unit.

§ 919.4 *Production area.* "Production area" means all territory included within the boundaries of the State of New York (except the counties of Suffolk, Nassau, Queens, Kings, New York, Bronx, and Richmond).

§ 919.5 *Potatoes.* "Potatoes" means all varieties of Irish potatoes grown within the production area.

§ 919.6 *Handler; shipper.* "Handler" is synonymous with "shipper" and means any person (except a common or contract carrier of potatoes owned by another person) who ships potatoes.

§ 919.7 *Ship; handle.* "Ship" or "handle" means to transport, sell, or in any other way to place potatoes in the current of commerce within the production area or between the production area and any point outside thereof: *Provided,* That such definition shall not include or be applicable to the sale or transportation of ungraded potatoes within the production area for storing, or the sale or transportation of potatoes to a recognized dealer or packer within the production area for the purpose of having such potatoes prepared for market.

§ 919.8 *Producer.* "Producer" means any person engaged in the production of potatoes for market.

§ 919.9 *Fiscal year.* "Fiscal year" means the period beginning July 1 of each year and ending June 30 following.

§ 919.10 *Committee.* "Committee" means the administrative committee called the Upstate New York Potato Committee established pursuant to § 919.23.

§ 919.11 *Varieties.* "Varieties" means and includes all classifications or subdivisions of Irish potatoes according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture.

§ 919.12 *Seed potatoes.* "Seed potatoes" means and includes all potatoes officially certified and tagged, marked, or otherwise appropriately identified, under the supervision of the official seed potato certifying agency of the State of New York.

§ 919.13 *Table stock potatoes.* "Table stock potatoes" means and includes all potatoes not included within the definition of "seed potatoes."

§ 919.14 *Pack.* "Pack" means a unit of potatoes contained in a bag, crate, or other type of container and falling within specific weight limits recommended by the committee and approved by the Secretary.

§ 919.15 *Grade.* "Grade" means any one of the officially established grades of potatoes, and "size" means any one of

the officially established sizes of potatoes, as defined and set forth in:

(a) The United States Standards for Potatoes issued by the United States Department of Agriculture (14 F. R. 1955, 2161), or amendments thereto, or modifications thereof, or variations based thereon;

(b) The United States Consumer Standards for Potatoes issued by the United States Department of Agriculture (12 F. R. 7281), or amendments thereto, or modifications thereof, or variations based thereon; or

(c) State of New York Standards for Potatoes issued by the Commissioner of Agriculture of the State of New York, or amendments thereto, or modifications thereof, or variations based thereon.

§ 919.16 *Export.* "Export" means shipment of potatoes beyond the boundaries of continental United States.

§ 919.17 *District.* "District" means each one of the geographical divisions of the production area established pursuant to § 919.25.

§ 919.18 *Brand.* "Brand" means to mark, tag, or label the grade, size, quality, net contents, in terms of weight, measure, or numerical count, and the name and address of the first handler on each container of potatoes.

§ 919.19 *Part and subpart.* "Part" means the order regulating the handling of Irish Potatoes grown in the State of New York (except the counties of Suffolk, Nassau, Queens, Kings, New York, Bronx, and Richmond), and all rules, regulations, and supplementary orders issued thereunder, and the aforesaid order shall be a "subpart of such part."

ADMINISTRATIVE COMMITTEE

§ 919.23 *Establishment and membership.* (a) The Upstate New York Potato Committee consisting of 9 members of whom 6 shall be producers and 3 shall be handlers is hereby established. For each member of the committee there shall be an alternate who shall have the same qualifications as the member.

(b) (1) Each person selected as a committee member or alternate to represent producers shall be an individual who is a producer or an officer or employee of a producer in the district for which selected.

(2) Each person selected as a committee member or alternate to represent handlers shall be an individual who is a handler or an officer or employee of a handler in the production area.

§ 919.24 *Term of office.* (a) The term of office of committee members and their alternates shall be three fiscal years: *Provided,* That the terms of office of 3 of the initial members and their respective alternates shall be one year, and of 3 other members and alternates shall be two years. Each member and alternate shall continue to serve until the respective successor is selected and has qualified.

(b) Committee members and alternates shall serve during the term of office for which they are selected and have qualified, or during that portion thereof beginning on the date on which they qualify during the term of office.

§ 919.25 *Districts.* (a) For the purpose of selecting producer committee members, the following districts of the production area are hereby established:

District No. 1. Shall include the counties of Wayne, Seneca, Schuyler, Chemung, and all the counties west thereof;

District No. 2. Shall include the counties of St. Lawrence, Franklin, Clinton, Essex, Warren, and Washington;

District No. 3. Shall include all the remaining counties in the production area not included in Districts Nos. 1 and 2.

(b) The Secretary, upon the recommendation of the committee, may reestablish districts within the production area and may reapportion committee membership among the various districts: *Provided,* That in recommending any such changes in districts or representation the committee shall give consideration to: (1) the relative importance of new areas of production; (2) changes in the relative position with respect to production of existing districts; (3) the geographic location of production areas as it would affect the efficiency of administering this subpart; and (4) other relevant factors: *Provided further,* That there shall be no change in the total number of committee members or in the total number of districts.

§ 919.26 *Nomination.* The Secretary may select the members of the Upstate New York Potato Committee and their respective alternates from nominations which may be made in the following manner:

(a) Nominations for initial members of the committee and their respective alternates may be submitted by producers, handlers, or groups thereof, and such nominations may be by virtue of elections conducted by groups of producers and by groups of handlers.

(b) In order to provide nominations for succeeding committee members and alternates:

(1) The Upstate New York Potato Committee shall hold or cause to be held 60 days prior to the end of each fiscal year, after the effective date of this subpart, a meeting or meetings of producers and of handlers respectively in each of the districts designated in § 919.25 in which the terms of office of committee members, and their respective alternates, will terminate at the end of the then current fiscal year;

(2) At each such meeting at least two nominees shall be designated for each position as member and for each position as alternate member on the committee which is vacant or which is to become vacant at the end of the then current fiscal year;

(3) Nominations for committee members and alternate members shall be supplied to the Secretary in such manner and form as he may prescribe, not later than 30 days prior to the end of each fiscal year;

(4) Only producers may participate in designating nominees for producer committee members and their alternates and only handlers may participate in designating nominees for handler committee members and their alternates. For the purpose of designating nominees for handler committee members and alternates, a handler shall be considered to be a person who produces not more than 50 percent of the total volume of potatoes handled by himself; each person who is both a handler and a producer may vote either as a handler or as a producer and may elect, subject to such 50 percent limitation, the group in which he votes.

(5) Each producer and each handler of potatoes is entitled to cast only one vote on behalf of himself, his agents, subsidiaries, affiliates, and representatives, for producer or handler committee members and alternates, respectively: *Provided,* That producers in more than one district shall elect the district in which they will participate in nominating producer committee members and alternates: *Provided further,* That an eligible voter's privilege of casting only one vote, as aforesaid, shall be construed to permit a voter to cast one vote for each position to be filled in the respective district in which he elects to vote.

§ 919.27 *Selection.* The Secretary shall select three producer members of the committee with their respective alternates from District No. 1; one producer member of the committee with his respective alternate from District No. 2; and two producer members with their respective alternates from District No. 3, as such districts are defined in § 919.25. The Secretary shall select three handler members of the committee with their respective alternates from the production area at large: *Provided,* That not more than two of such handler members will be from District No. 1. Each person selected as a handler member or alternate shall not produce more than 50 percent of the potatoes handled by himself.

§ 919.28 *Failure to nominate.* If nominations are not made within the time and in the manner specified by the Secretary pursuant to § 919.26, the Secretary may, without regard to nominations, select the committee members and alternates which selection shall be on the basis of the representation provided for in § 919.27.

§ 919.29 *Acceptance.* Any person selected as a committee member or as an alternate shall qualify by filing a written acceptance with the Secretary within 10 days after being notified of such selection.

§ 919.30 *Vacancies.* To fill any vacancy occasioned by the failure of any person selected as a committee member or as an alternate to qualify, or in the event of the death, removal, resignation, or disqualification of any qualified member or alternate, a successor for his unexpired term may be selected from nominations made in the manner specified in § 919.26, or the Secretary may select such committee member or alternate from previously unselected nominees on the current nominee list from the district involved. If the names of nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs, such vacancy may be filled without regard to nominations, which selection shall be made on the basis of the representation provided for in § 919.27.

§ 919.31 *Alternate members.* An alternate member of the committee shall act in the place and stead of the member for whom he is an alternate, during such member's absence. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor of such member is selected and has qualified.

§ 919.32 *Procedure.* (a) Six members of the committee shall be necessary to constitute a quorum and six concurring votes, including the vote of at least one handler member, will be required to pass any motion or approve any committee action.

(b) The committee may provide for meetings by telephone, telegraph, or other means of communication and any vote cast at such a meeting shall be confirmed promptly in writing: *Provided,* That if any assembled meeting is held, all votes shall be cast in person.

§ 919.33 *Expenses and compensation.* Committee members and alternates shall be reimbursed for expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers hereunder, and shall receive compensation at a rate to be determined by the committee, which rate shall not exceed $10.00 for each day, or portion thereof, spent in attending to committee business.

§ 919.34 *Powers.* The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate and report to the Secretary complaints of violations of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 919.35 *Duties.* It shall be the duty of the committee:

(a) To act as intermediary between the Secretary and any producer or handler;

(b) To select a chairman and such other officers for each fiscal period as may be necessary, to select subcommittees of committee members and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(c) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person;

(d) To investigate, from time to time, and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to potatoes, and to engage in such research and service activities which relate to the handling or marketing of potatoes as may be approved by the Secretary;

(e) To furnish to the Secretary such available information as he may request;

(f) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee and such minutes, books, and records shall be subject to examination at any time by the Secretary or his authorized agent or representative;

(g) To make available to producers and handlers the committee voting record on recommended regulations and on other matters of policy;

(h) At the beginning of each fiscal year, to submit to the Secretary a budget of its expenses for such fiscal year, together with a report thereon;

(i) To cause the books of the committee to be audited by a competent accountant at least once each fiscal year, and at such other time as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part; a copy of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers; and

(j) To consult, cooperate, and exchange information with other potato marketing committees and other individuals or agencies in connection with all proper committee activties and objectives under this part.

EXPENSES, ASSESSMENTS, AND BUDGETS

§ 919.41 *Budget.* The committee shall prepare a budget for each fiscal year showing its anticipated expenses and a proposed rate of assessment to cover such expenses. The committee shall also transmit to the Secretary a report accompanying the budget showing the basis for its calculation of expenses and the proposed rate of assessment.

§ 919.42 *Expenses.* The committee is authorized to incur such expenses as the Secretary, upon the basis of the aforesaid budget or other available information, finds may be necessary during each fiscal year to perform its functions under this part and for such other purposes as may be appropriate pursuant to the provisions of this part.

§ 919.43 *Rate of assessment.* The funds to cover such expenses shall be acquired by the levying on handlers of assessments which shall be at a rate fixed by the Secretary, upon the basis of the committee's recommendation or other available information. Each handler who first ships potatoes shall pay assessments to the committee, upon demand, which assessments shall be such handler's pro rata share of the expenses which will be appropriately incurred by the committee during each fiscal year. Such handler's share of such expense shall be proportionate to the ratio between the total quantity of potatoes handled by him as the first handler thereof, during the applicable fiscal year, and the total quantity of potatoes handled by all handlers as the first handlers thereof, during the same fiscal year.

§ 919.44 *Increasing rate of assessment.* Upon recommendation of the committee or upon the basis of a later finding relative to the committee's expenses or revenue, the Secretary may increase the rate of assessment to cover expenses which shall be appropriately incurred. Such increase shall be applicable to all potatoes handled during the given fiscal year.

§ 919.45 *Refunds.* If at the end of a fiscal year, it shall appear that assessments collected are in excess of expenses incurred, each handler entitled to a proportionate refund of the excess assessments shall be credited with such refund against the operations of the following fiscal year, unless he demands payment thereof, in which event such proportionate refund shall be paid to him.

§ 919.46 *Accounting.* All funds received by the committee pursuant to any provision of this part shall be used solely for the purposes specified in this part and shall be accounted for in the following manner:

(a) The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(b) Whenever any person ceases to be a committee member or alternate, he shall account for all receipts and disbursements and deliver all property and funds in his hands, together with all books and records in his possession, to his successor in office or to such person as the Secretary may designate, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor or in such designated person the right to all the property, funds, or claims vested in such member or alternate.

§ 919.47 *Collection of funds.* (a) The committee may, with the approval of the Secretary, maintain in its own name or in the name of its members, a suit against any handler for the collection of such handler's pro rata share of the expenses of the committee.

(b) In order to provide funds to carry out the functions of the committee, handlers may make advance payment of assessments.

REGULATION

§ 919.51 *Marketing policy preparation.* At the beginning of each fiscal year the committee shall consider and prepare a proposed policy for the marketing of potatoes during such fiscal year. In developing its marketing policy the committee shall investigate relevant supply and demand conditions for potatoes. In such investigations the committee shall give appropriate consideration to the following:

(a) Market prices of potatoes, including prices by grade, size, and quality in wholesale or in consumer packs, or any other shipping unit;

(b) Supply of potatoes, by grade, size, and quality, in the production area and in other production areas;

(c) The trend and level of consumer income; and

(d) Other relevant factors.

§ 919.52 *Marketing policy report.* (a) The committee shall submit to the Secretary a report setting forth the aforesaid marketing policy. The committee shall also notify producers and handlers of the contents of such reports.

(b) In the event it becomes advisable to deviate from such marketing policy, because of changed supply or demand

conditions, the committee shall formulate a new marketing policy, in accordance with the manner previously outlined in § 919.51. The committee shall also submit a report thereon to the Secretary and notify producers and handlers of such revised or amended marketing policy.

§ 919.53 *Recommendation for regulation; committee recommendations.* The committee shall recommend regulation to the Secretary whenever it finds that such regulation, as provided in § 919.54, will tend to effectuate the declared policy of the act. The committee may also recommend modification, suspension, or termination of any regulation in order to facilitate shipments of potatoes for the specified purposes set forth in § 919.55.

§ 919.54 *Issuance of regulations.* (a) The Secretary shall limit the shipment of potatoes whenever he finds from the recommendations and information submitted by the committee, or from other available information, that such regulation will tend to effectuate the declared policy of the act. Such limitation may:

(1) Regulate, in any or all portions of the production area, the shipment of particular grades, sizes or quality of any or all varieties of potatoes during any period;

(2) Regulate the shipment of particular grades, sizes or quality of potatoes differently for different varieties, for different portions of the production area, for different packs, or any combination of the foregoing, during any period; or

(3) Regulate the shipment of potatoes by establishing and maintaining, in terms of grades, sizes, or both, minimum standards of quality and maturity.

(b) During any period when grade, size, or quality regulations are in effect the Secretary may require that potato containers shall be branded whenever such requirements will tend to effectuate the declared policy of the act.

(c) During any period when branding is required pursuant to this subpart, each handler who first handles potatoes shall, prior to such handling, brand, or cause to be branded, each container of such potatoes; and no person shall handle any potatoes during such period unless the respective container thereof is branded.

§ 919.55 *Modification, suspension, or termination.* The Secretary, whenever he finds, upon the basis of the recommendations and information submitted by the committee, or from other available information, that it will tend to effectuate the declared policy of the act, shall modify, suspend, or terminate regulations issued pursuant to §§ 919.43, 919.44, 919.54, 919.66, or any combination thereof, in order to facilitate shipments of potatoes for the following purposes:

(a) For seed;

(b) For export;

(c) For distribution by the Federal Government;

(d) For manufacture or conversion into specified products;

(e) For livestock feed;

(f) For other purposes which may be specified.

§ 919.56 *Minimum quantity regulation.* The committee, with the approval of the Secretary, may establish, for any or all portions of the production area, minimum quantities below which shipments will be free from regulations, issued or in effect pursuant to §§ 919.43, 919.44, 919.54, 919.66, or any combination thereof.

§ 919.57 *Notification of regulation.* The Secretary shall notify the committee of any regulations issued or of any modification, suspension, or termination thereof. The committee shall give reasonable notice thereof to handlers.

§ 919.58 *Safeguards.* (a) The committee, with the approval of the Secretary, may prescribe, (1) adequate safeguards to prevent shipments pursuant to §§ 919.55 and 919.56 from entering channels of trade for other than the specific purpose authorized therefor, (2) adequate safeguards to assure that shipments made without inspection pursuant to §919.66 meet effective grade, size or quality regulations, and (3) rules governing the issuance and the contents of Certificates of Privilege if such certificates are prescribed as safeguards by the committee.

(b) Safeguards, as prescribed herein, may include requirements that:

(1) Handlers shall file applications with the committee to ship potatoes pursuant to §§ 919.55 and 919.56;

(2) Handlers shall obtain inspection provided by § 919.66 or pay the pro rata share of expenses provided by § 919.43, or both, in connection with potato shipments effected under the provisions of §§ 919.55 and 919.56: *Provided*, That such inspection or payment of expenses may be required at different times than otherwise specified by the aforesaid sections; and

(3) Handlers shall obtain Certificates of Privilege from the committee for shipments of potatoes effected or to be effected under provisions of §§ 919.55 and 919.56 and shipments made without inspection pursuant to § 919.66.

(c) The committee may rescind or deny Certificates of Privilege to any shipper if proof is obtained that potatoes shipped by him for the purposes stated in §§ 919.55, 919.56, and 919.66 were handled contrary to the requirements applicable thereto.

(d) The Secretary shall have the right to modify, change, alter, or rescind any safeguards prescribed and any certificates issued by the committee pursuant to the provisions of this section.

(e) The committee shall make reports to the Secretary, as requested, showing the number of applications for such certificates, the quantity of potatoes covered by such applications, the number of such applications denied and certificates granted, the quantity of potatoes shipped under duly issued certificates and such other information as may be requested.

INSPECTION

§ 919.66 *Inspection and certification.* During any period in which shipments of potatoes are regulated, pursuant to the provisions of §§ 919.43, 919.44, or 919.54, or any combination thereof, no handler shall ship potatoes unless, prior thereto, such shipment was inspected by an authorized representative of the Federal-State Inspection Service, or such other inspection service as the Secretary shall designate. Each handler procuring inspections pursuant to this section, shall make arrangements with the inspecting agency to forward promptly to the committee a copy of the inspection certificate: *Provided*, That the regrading, resorting, repacking, or other further preparation of inspected potatoes for market shall invalidate prior inspection thereon and subsequent shipment of such potatoes after regrading, resorting, repacking, or other preparation for market shall not be effected unless, prior thereto, such shipment is inspected as provided in this section: *Provided further*, That the committee may adopt, subject to the approval of the Secretary, procedures permitting the shipment of potatoes without the required prior inspection thereon; such procedures shall include a requirement that each handler-applicant for a waiver show that he requested shipping point inspection and that the appropriate inspection agency stated that it could not supply reasonably prompt service in connection with such request; and such procedures may require that each applicant agrees, as a condition for the issuance of a waiver, to one or more of the following:

(a) That the potatoes to be shipped under such waiver will be inspected and certified at destination if an inspector is available for such purpose;

(b) That, where inspection indicates that potatoes shipped under a waiver fail to meet minimum grade, size, and quality requirements in effect at the time of such inspection, the potatoes will be removed from all normal domestic commercial channels, except for disposition pursuant to § 919.55; and

(c) That additional waivers will not be granted to an applicant, for the remainder of the fiscal year, if the potatoes shipped under a waiver and failing to meet minimum grade, size, and quality requirements, are not removed from all normal domestic market channels, except for disposition pursuant to § 919.55.

EXEMPTIONS

§ 919.71 *Procedure.* The committee may adopt, subject to approval of the Secretary, the procedures pursuant to which certificates of exemption will be issued to producers or handlers.

§ 919.72. *Granting exemptions.* (a) The committee may issue certificates of exemption to any producer who applies for such exemption and furnishes adequate evidence to the committee that, by reason of a regulation issued pursuant to § 919.54, he will be prevented from handling, or causing to be handled, as large a proportion of his production as the average proportion of production handled, or caused to be handled, during the entire season (or such portion thereof as may be determined by the committee) by all producers in said applicant's immediate area of production and that the grade, size, or quality of the applicant's potatoes have been adversely affected by acts beyond the applicant's control and

by acts beyond reasonable expectation. Each such certificate shall permit the producer to handle, or cause to be handled, the amount of potatoes specified thereon. Such certificate shall be transferred with such potatoes at time of transportation or sale.

(b) The committee may issue certificates of exemption to any handler who applies for such exemption and furnishes adequate evidence to the committee that, by reason of a regulation issued pursuant to § 919.54, he will be prevented from handling as large a proportion of his storage holdings of ungraded potatoes, acquired during or immediately following the digging season, as the average proportion of ungraded storage holdings handled by all handlers in said applicant's immediate shipping area, and that the grade, size, or quality of the applicant's potatoes have been adversely affected by acts beyond the applicant's control and by acts beyond reasonable expectation. Each certificate shall permit the handler to handle the amount of potatoes specified thereon. Such certificate shall be transferred with such potatoes at time of transportation or sale.

(c) The committee shall be permitted, at any time, to make a thorough investigation of any producer's or handler's claim pertaining to exemptions.

§ 919.73 *Appeal.* If any applicant for exemption certificates is dissatisfied with the determination by the committee with respect to his application, said applicant may file an appeal with the committee. Such an appeal must be taken promptly after the determination by the committee from which the appeal is taken. Any applicant filing an appeal shall furnish evidence satisfactory to the committee for a determination on the appeal. The committee shall thereupon reconsider the application, examine all available evidence, and make a final determination concerning the application. The committee shall notify the appellant of the final determination and shall furnish the Secretary with a copy of the appeal and a statement of considerations involved in making the final determination.

§ 919.74 *Records, reports and review of exemptions.* (a) The committee shall maintain a record of all applications submitted for exemption certificates, a record of all exemption certificates issued and denied, the quantity of potatoes covered by such exemption certificates, a record of the amount of potatoes shipped under exemption certificates, a record of appeals for reconsideration of applications, and such additional information as may be requested by the Secretary. Periodic reports on such records shall be compiled and issued by the committee upon request of the Secretary.

(b) The Secretary shall have the right to modify, change, alter, or rescind any procedure and any exemptions granted pursuant to §§ 919.71, 919.72, 919.73, or any combination thereof.

MISCELLANEOUS PROVISIONS

§ 919.81 *Reports.* Upon the request of the committee, with approval of the Secretary, every handler shall furnish to the committee, in such manner and at such time as may be prescribed, such information as will enable the committee to exercise its powers and perform its duties under this part. Handlers shall maintain records from which such reported information can be verified by the committee. The Secretary shall have the right to modify, change, or rescind any requests for reports pursuant to this section.

§ 919.82 *Compliance.* Except as provided in this part, no handler shall ship potatoes, the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part, and no handler shall ship potatoes except in conformity to the provisions of this part.

§ 919.83 *Right of the Secretary.* The members of the committee (including successors and alternates), and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval the disapproved action of the said committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 919.84 *Effective time.* The provisions of this subpart shall become effective at such time as the Secretary may declare above his signature attached to this subpart, and shall continue in force until terminated in one of the ways specified in this subpart.

§ 919.85 *Termination.* (a) The Secretary may, at any time, terminate the provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary may terminate or suspend the operation of any or all of the provisions of this subpart whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal year whenever he finds that such termination is favored by a majority of producers who, during the preceding fiscal year, have been engaged in the production for market of potatoes: *Provided*, That such majority has, during such year, produced for market more than fifty percent of the volume of such potatoes produced for market; but such termination shall be effective only if announced on or before May 31 of the then current fiscal year.

(d) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 919.86 *Proceedings after termination.* (a) Upon the termination of the provisions of this subpart, the then functioning members of the committee shall continue as trustees for the purpose of liquidating the affairs of the committee, of all the funds and property then in the possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and shall upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 919.87 *Effect of termination or amendment.* Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 919.88 *Duration of immunities.* The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 919.89 *Agents.* The Secretary may, by designation in writing, name any person, including any officer or employee of the Government, or name any bureau or division of the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

§ 919.90 *Derogation.* Nothing contained in this subpart is, or shall be construed to be, in derogation or in modifications of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 919.91 *Personal liability.* No member or alternate member of the committee nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler

or to any person for errors in judgment mistakes, or other acts, either of commission or omission, as such member, alternate, agent, or employee except for acts of dishonesty.

§ 919.92 *Separability.* If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

§ 919.93 *Amendments.* Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

[F. R. Doc. 50-6919; Filed, Aug. 7, 1950; 8:49 a. m.]

[7 CFR, Part 919]

[Docket No. AO-220]

HANDLING OF IRISH POTATOES GROWN IN UPSTATE NEW YORK

ORDER DIRECTING THAT A REFERENDUM BE CONDUCTED AMONG PRODUCERS; DESIGNATING AGENTS TO CONDUCT SUCH REFERENDUM; AND DETERMINATION OF REPRESENTATIVE PERIOD

Pursuant to the applicable provisions of Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.; 61 Stat. 202, 707; 62 Stat. 1247; 63 Stat. 1051), it is hereby directed that a referendum be conducted among producers who, during the period July 1, 1949, to June 30, 1950 (which period is hereby determined to be a representative period for the purpose of such referendum), were engaged in the production in the State of New York (except the Counties of Suffolk, Nassau, Queens, Kings, New York, Bronx, and Richmond) of Irish potatoes for market, to determine whether such producers favor the issuance of an order regulating the handling of Irish potatoes grown in the State of New York (except the Counties of Suffolk, Nassau, Queens, Kings, New York, Bronx, and Richmond); and said order is annexed to the decision of the Secretary of Agriculture filed[1] simultaneously herewith.

A. C. Cook, O. H. Chapin, John Rivoire, R. L. Hawes, and M. F. Miller, of the Fruit and Vegetable Branch, Production and Marketing Administration, United States Department of Agriculture are hereby designated as agents of the Secretary of Agriculture to perform, jointly or severally, the following functions in connection with such referendum:

(a) Conduct said referendum in the manner herein prescribed:

(1) By determining the time of commencement and termination of the period of the referendum, and by giving opportunity to each of the aforesaid producers to cast his ballot, in the manner herein authorized, relative to the aforesaid order, on a copy of the appropriate ballot form. A cooperative association of producers, bona fide engaged in marketing potatoes grown in the State of New York (except the counties of Suffolk, Nassau, Queens, Kings, New York, Bronx, and Richmond), or in rendering services for or advancing the interests of producers of such potatoes, may vote for the producers who are members of, stockholders in, or under contract with such cooperative association (such vote to be cast on a copy of the appropriate ballot form), and the vote of such cooperative association shall be considered as the votes of such producers.

(2) By giving public notice, as prescribed in (a) (3) hereof, (i) of the time during which the referendum will be conducted; (ii) that any ballot may be cast by mail; (iii) that all ballots so cast must be addressed to O. H. Chapin, c/o New York State PMA Committee, Byrne Building, Syracuse 2, New York; and (iv) of the time prior to which such ballots must be postmarked.

(3) By giving public notice (i) by utilizing (without advertising expense), available agencies of public information, including both press and radio facilities serving the aforesaid production area; (ii) by mailing a notice thereof (including a copy of the text of the order and a copy of the appropriate ballot form) to each producer, and to each such cooperative association, whose name and address is known to such agents; and (iii) by such other means as said referendum agents may deem advisable.

(4) By conducting meetings of producers and arranging for balloting at the meeting places, if said referendum agents determine that voting shall be at meetings. At each such meeting, balloting shall continue until all of the producers who are present, and who desire to do so, have had an opportunity to vote. Any producer may cast his ballot at any such meeting in lieu of voting by mail.

(5) By giving ballots and copies of the text of the order to producers at the meeting; and receiving any ballots when they are cast.

(6) By securing the name and address of each person casting a ballot, and inquiring into the eligibility of such person to vote in the referendum. Any individual casting a ballot on behalf of a producer, a corporation, or a cooperative association of producers shall submit, with the ballot, evidence of his authority to cast such ballot, which evidence in the case of a corporation or a cooperative association shall be in the form of a certified copy of a resolution of the Board of Directors.

(7) By giving public notice of the time and place of any meetings authorized hereunder by posting a notice thereof, at least two days in advance of each such meeting, at each such meeting place, and in two or more public places within the applicable area; and, so far as practicable by giving additional notice in the manner prescribed in paragraph (a) (3) hereof.

(8) By appointing any county agricultural agent, and by authorizing the chairman of the State Production and Marketing Administration committee in the State of New York to appoint any member or members of a county Production and Marketing Administration committee in the State of New York and by appointing any other persons deemed necessary or desirable, to assist the said referendum agents in performing their duties hereunder. Each such person, so appointed, shall serve without compensation; may be authorized by the said referendum agents, or any of them, to perform any or all of the functions set forth in subparagraphs (4), (5), (6), and (7) of paragraph (a) hereof (which, in the absence of such appointment of subagents, shall be performed by said referendum agents) in accordance with the requirements herein set forth, and shall forward to O. H. Chapin, c/o New York State Production and Marketing Administration Committee, Byrne Building, Syracuse 2, New York, immediately after the close of the referendum, the following:

(i) A register containing the name and address of each producer and cooperative association, as aforesaid, to whom a ballot form was given;

(ii) A register containing the name and address of each producer and cooperative association, as aforesaid, from whom an executed ballot was received;

(iii) All of the ballots received by the respective referendum agent or appointee in connection with the referendum, together with a certificate to the effect that the ballots forwarded are all of the ballots cast and which were received by the respective agent or appointee during the referendum period;

(iv) A statement showing when and where each notice of referendum was given and, if the notice was mailed, the mailing list showing the names and addresses to which the notice was mailed and the time of such mailing; and

(v) A detailed statement reciting the method used in giving publicity of such referendum.

(b) Each referendum agent and appointee pursuant hereto shall not refuse to accept a ballot submitted or cast; but should they, or any of them, deem that a ballot should be challenged for any reason, or if such ballot is challenged by any other person, said agent or appointee shall endorse above his signature, on the back of said ballot, a statement that such ballot was challenged, by whom challenged, and the reasons therefor; and the number of such challenged ballots shall be stated when they are forwarded as provided herein.

(c) Upon receipt by O. H. Chapin of all ballots cast and such other information and data as may be required pursuant hereto, he shall forward the ballots, together with the information and data, to the Fruit and Vegetable Branch, Production and Marketing Administration, United States Department of Agriculture, Washington 25, D. C. The Fruit and Vegetable Branch shall canvass the ballots and prepare and submit to the Secretary a detailed report covering the results of the referendum, the manner in which the referendum was conducted, the extent and kind of public notice given, and all other

[1] See F. R. Doc. 50-6919, *supra*.

information pertinent to the full analysis of the referendum and its results.

(d) All ballots shall be kept confidential.

The Director of the Fruit and Vegetable Branch, Production and Marketing Administration, United States Department of Agriculture is hereby authorized to prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the said referendum agents and appointees in conducting said referendum.

Copies of the text of the aforesaid order may be examined in the Office of the Hearing Clerk, Room 1353, South Building, United States Department of Agriculture, Washington, D. C., and at the county Production and Marketing Administration Office in each of the counties within the production area.

Ballots to be cast in the referendum and copies of the text of the order may be obtained from any referendum agent, and any appointee hereunder.

(48 Stat. 31, as amended; 7 U. S. C. 601 et seq.; 61 Stat. 202, 707; 62 Stat. 1247; 63 Stat. 1051)

Done at Washington, D. C., this 3d day of August 1950.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

[F. R. Doc. 50-6920; Filed, Aug. 7, 1950; 8:49 a. m.]

[7 CFR, Part 922]

[Docket No. AO-223]

HANDLING OF IRISH POTATOES GROWN IN CENTRAL NEBRASKA

FINDINGS AND DETERMINATIONS ON RESULTS OF REFERENDUM ON PROPOSED MARKETING ORDER

Pursuant to Public Act No. 10, 73d Congress (May 12, 1933) as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.; 61 Stat. 202, 707; 62 Stat. 1247; 63 Stat. 1051), and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR, Part 900), a public hearing was held at Kearney, Nebraska, on May 1-2, 1950, pursuant to notice thereof which was published in the FEDERAL REGISTER (15 F. R. 2109, 2228), upon a proposed marketing agreement and a proposed marketing order regulating the handling of potatoes grown in the counties of Phelps, Loup, Garfield, Custer, Valley, Greeley, Sherman, Howard, Hall, Buffalo, Dawson, and Kearney in Nebraska. The recommended decision (15 F. R. 3687) of the Assistant Administrator, Production and Marketing Administration, and the decision (15 F. R. 4284) of the Secretary of Agriculture, setting forth a proposed marketing agreement and order as the appropriate and detailed means for effectuating the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended, were published in the FEDERAL REGISTER on June 13 and July 6, 1950, respectively. The Secretary also issued an order (15 F. R. 4289) directing that a referendum be conducted among producers of potatoes grown in Central Nebraska to determine whether the requisite majority of such producers favors the issuance of the proposed marketing order.

It is hereby found and determined, on the basis of the results of the referendum conducted pursuant to the aforesaid referendum order, that the issuance of the proposed marketing order regulating the handling of Irish potatoes grown in Central Nebraska is not approved or favored by the requisite percentage of producers or of the total volume of production voting in the aforesaid referendum.

It is hereby further determined that the proposed marketing order set forth in the Secretary's decision of July 6, 1950 (15 F. R. 4284), cannot be made effective because of the failure of producers to approve or favor its issuance by the requisite percentage of producers or of the total volume of production voting in the referendum conducted among such producers.

Done at Washington, D. C., this 3d day of August 1950.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

[F. R. Doc. 50-6918; Filed, Aug. 7, 1950; 8:49 a. m.]

FEDERAL SECURITY AGENCY

Food and Drug Administration

[21 CFR, Part 17]

[Docket No. FDC-31 (b)]

BAKERY PRODUCTS; DEFINITIONS AND STANDARDS OF IDENTITY

NOTICE OF PROPOSED RULE MAKING

In the matter of definitions and standards of identity for the following foods: bread, white bread, and rolls, white rolls, or buns, white buns; enriched bread and enriched rolls or enriched buns; milk bread, and milk rolls or milk buns; raisin bread and raisin rolls or raisin buns; whole wheat bread, graham bread, entire wheat bread, and whole wheat rolls, graham rolls, entire wheat rolls, or whole wheat buns, graham buns, entire wheat buns; breads and rolls or buns made with combinations of flour, whole wheat flour, cracked wheat, and crushed wheat; and unsalted breads and rolls or buns:

It is proposed that, by virtue of the authority vested in the Federal Security Administrator by the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055; 21 U. S. C. 341, 371) and upon the basis of substantial evidence received at the public hearing held pursuant to the notice published in the FEDERAL REGISTER on October 14, 1948 (13 F. R. 6023), and upon consideration of proposed findings of fact filed by interested parties, which are adopted in part and rejected in part as is apparent from the detailed findings made below, the following order be made:

Findings of fact.[1] 1. The food commonly and usually known as "bread" or "white bread" and that commonly and usually known as "rolls," "white rolls," "buns," or "white buns" are prepared by baking a kneaded yeast-leavened dough made by moistening flour with water (or with certain other liquid ingredients hereinafter specified, alone or in combination with water) with the addition of salt, and usually with the addition of certain other ingredients as hereafter set forth. Bread and rolls are sometimes prepared from bromated flour or phosphated flour or both, with or without admixture with plain flour. (R. 30, 49, 57, 59-62, 69, 70, 71; Ex. A)

2. Rolls, sometimes known as buns, differ from bread in the size of the units baked, and usually in their shape. A reasonable and satisfactory differentiation is that a loaf of bread weighs, after cooling, one-half pound or more, whereas a roll, after cooling, weighs less than one-half pound. (R. 60-62, 69; Ex. A)

3. White bread and, at times, other types of bread are sometimes made without added salt, for special dietary use. These breads are often referred to as salt-free breads. A more accurate modifying designation is "unsalted." They serve a useful purpose when sold to persons who know their characteristics and use them as a special type of bread. (R. 14296-14297)

4. All bread and rolls contain moisture. An excessive moisture content tends to defraud consumers. A reasonable maximum limitation upon the moisture, which is somewhat in excess of the usual content, is 38 percent by weight, the solids being not less than 62 percent by weight. A satisfactory and reliable method for determining the total solids contained in bread and rolls is the method prescribed in "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," Sixth Edition, 1945, page 260, section 20.84 (a), "Total Solids in an Entire Loaf of Bread—Official," except that if the baked unit weighs 1 pound or more, one entire unit is used for the determination, and if the baked unit weighs less than 1 pound such number of entire units as weigh 1 pound or more are used for the determination. (R. 64, 68, 85-87, 138-142; Ex. A, 2)

5. Shortening is commonly, but not always, added to bread dough. Any food fat or food oil, including butter, oleomargarine and cream or any mixture of two or more of these, is suitable for this purpose. For accentuating the shortening action of fats and oils, lecithins derived from corn oil or soybean oil (which with their associated phosphatides are both commercially known as lecithin) and mono- and diglycerides of fat-forming fatty acids are sometimes used, and are suitable for such use. Lecithin was proposed as an ingredient of the dough apart from its use as an ingredient of shortening. There was no substantial evidence, however, that it serves any

[1] The citations following each finding of fact refer to the pages of the transcript of the testimony and the exhibits received in evidence at the hearing.

useful purpose other than as an ingredient of shortening. In 1942, mono- and diglycerides in limited amounts, usually not exceeding 5 percent, were used in many types of shortening. Since 1942, experience has shown that even larger proportions of mono- and diglycerides in the shortening still further increase the shortening effect. Although detailed data as to the physical properties of bread prepared with varying amounts of shortenings containing varying amounts of mono- and diglycerides are not shown in the record, it is evident that when the mono- and diglyceride content of the shortening does not exceed 25 percent no properties are imparted by it to bread other than those commonly associated with the use of shortening. (R. 71–73, 194, 198, 209–213, 228–229, 243–244, 269–270, 295, 307, 327, 464–466, 496–497, 4190–4191, 4391, 5160, 5254, 5287–5290, 5305–5306, 5407–5408, 5504–5505, 5514–5518, 5815–5816, 5856–5858, 14045–14051; Ex. 3, 4, 44)

6. In addition to mono- and diglycerides of fat-forming fatty acids, corresponding compounds have recently been developed in which acetylated tartaric acid has been substituted for fat-forming fatty acids. Compounds of this kind have been used to some extent in bread dough. Their effect on the bread is very similar to that resulting from the use of similar quantities of mono- and diglycerides of fat-forming fatty acids. Prior to the use of mono- and diglycerides of acetylated tartaric acid there had been no known employment of acetylated tartaric acid in preparing a food ingredient. Limited studies have been made of the physiological effects following the ingestion of acetylated tartaric acid. It appears to have little, if any, food value. Proponents of the use of the mono- and diglycerides of acetylated tartaric acid assumed, but we did not present evidence to prove, that the pharmacological properties of acetylated tartaric acid are the same as those of tartaric acid. The evidence showed that when mono- and digylcerides of acetylated tartaric acid were fed to animals in amounts somewhat exceeding those that would normally be present in bread there was no observable injury. Further experiments showed, however, that the acetylated tartaric acid was not broken down into acetic acid and tartaric acid in the bodies of the animals for a considerable time. Whether for this reason any adverse effect on humans might result was not definitely known. Although no injury was noted in the limited experiments carried out, the introduction into the human body of a substance such as acetylated tartaric acid, whose properties have not been thoroughly studied, cannot be justified by necessity for its use or by any advantages that the mono- and diglycerides of this acid may have over those of mono- and diglycerides of the fatty acids. The evidence does not justify a finding that the recognition of the mono- and diglycerides of acetylated tartaric acid as an optional ingredient of bread, rolls, and buns would promote honesty and fair dealing in the interest of consumers. (R. 12840–12841, 12843–12844, 12865–12866, 13052, 13086, 13119–13125, 13231, 13239, 13254–13255, 13299, 13304, 13356, 13358–13359, 13387–13389, 13412–13413, 13542; Ex. 244, 246, 247)

7. The quantity of shortening used in bread dough varies widely. Some breads contain no shortening. The evidence affords no basis for concluding that the fixing of any maximum or minimum limits for shortening would serve consumer interest. The usual quantities of shortening are between 2 and 6 parts by weight for each 100 parts by weight of flour used, and seldom exceed 12 parts except in the cases of "sweet goods" and "specialty goods," products so distinctively different from bread and rolls as to be unlikely to be confused with bread or rolls by consumers. Such products usually contain from 12 to 30 parts of shortening. The possible effect of the use of products referred to as emulsifiers on the quantity of shortening used in bread and rolls is discussed in finding 39. (R. 368, 2543–2544, 2549, 2594, 2597, 17063–17064, 17069–17071; Ex. D., 383, 384)

8. Milk and various milk products are widely used in making bread and rolls and serve to improve their nutritive value and modify certain physical characteristics. In addition to fluid milk there have been used for these purposes, singly or in combination, concentrated milk, evaporated milk, sweetened condensed milk, dried milk, skim milk, concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, sweetened condensed partly skim milk, and nonfat dry milk solids. (R. 73–75, 128–130, 438–440, 449; Ex. A)

9. In order to set bread made with any of the ingredients specified in finding 8 apart from milk bread, it is reasonable that such ingredients, together with any butter and cream used in bread, be so limited in quantity or composition as not to meet the requirements prescribed in findings 54 to 57, inclusive, for the quantity and composition of such ingredients in milk bread. (R. 74, 129)

10. Nonfat dry milk solids are widely used in the baking industry as an ingredient of bread and rolls. Occasionally bakers receive shipments of nonfat dry milk solids which have unsatisfactory baking qualities. The causes of poor baking qualities in these occasional lots of nonfat dry milk solids are not well understood. A proposal was made to provide, for use as an optional ingredient in bread or rolls, of nonfat dry milk solids that had been treated with calcium and magnesium oxides and to which soy flour was added. The mineral salts were said to neutralize any excess acidity of the product and improve its baking qualities. Testimony was incomplete relative to the type of nonfat dry milk solids used in preparing this combination, its acidity, and whether the properties of the finished mixture depended upon neutralization of the acidity of the nonfat dry milk solids. The evidence did not show that such modified nonfat dry milk solids had any better baking qualities by reason of the addition of calcium and magnesium oxide and soy flour. Calcium and magnesium oxides serve no useful purpose in bread or rolls. The use of soy flour as an ingredient of bread is described in other findings. (R. 14364–14366, 14386, 14393–14394, 14399, 14414, 14428–14429, 14463–14464, 14479, 14495–14496, 14516–14517, 14532–14536, 14543–14544, 14547, 14549–14551, 14563–14564)

11. During and shortly after the Second World War, nonfat dry milk solids were in short supply in the baking industry, and manufacturers of dairy products developed a dried cheese whey as a substitute for nonfat dry milk solids in bread and rolls. Dried cheese whey contains more lactose and less protein than nonfat dry milk solids. When prepared from proper raw materials cheese whey is suitable for human food. Although the properties imparted to bread by cheese whey are not identical with those imparted by nonfat dry milk solids, cheese whey performs certain desirable functions in bread. However, when cheese whey is used in place of nonfat dry milk solids the loaf volume of bread is decreased. In order to make the action of dried cheese whey simulate that of nonfat dry milk solids on the mixing time and loaf volume of bread, some manufacturers experimented with cheese whey containing calcium sulfate, and obtained a loaf volume comparable to that obtained with similar quantities of nonfat dry milk solids. In some of their experiments the cheese whey was first treated with sulfuric acid which was later neutralized by the addition of lime, thus forming calcium sulfate. Whether the use of this process actually changed some constituents of the whey or whether the added calcium sulfate increased the size of the loaves of bread in which this type of whey was used is not clear. The evidence does not show that the use in bread and rolls of cheese whey so processed would promote honesty and fair dealing in the interest of consumers. (R. 4844–4855, 4876–4881, 4895, 4915, 4918, 4922–4937, 4958, 4966, 5025–5026, 5034–5035, 5055–5056, 5062–5067)

12. Another ingredient of milk (usually prepared from whey but sometimes from skim milk) proposed for use in bread and rolls is a mixture of proteins consisting largely of albumin. The nutritive properties of these mixed proteins are very similar to those of casein, which supplies most of the protein in nonfat dry milk solids. Although formerly the cost of separating albumin from whey has been such that it has not been used to any substantial extent as a separate ingredient in foods, such albumin is a valuable food ingredient and serves somewhat the same purpose in bread as the proteins of nonfat dry milk solids. Albumin in amounts likely to be used would cause no noticeable change in the physical characteristics of the bread or rolls. There were indications from the testimony of proponents of the recognition of albumin as an optional ingredient of bread that its use would be accompanied by exaggerated representations, through labeling or advertising, that bread containing albumin had special nutritive properties. Although such promotion is not in the consumer interest, prohibition of the use of albumin does not appear warranted. The information required by the regulations prescribing the labeling of foods for special dietary use (21 CFR 125.1 et seq.) will aid in preventing consumer deception. (R.

14858–14861, 14864–14865, 14872–14876, 14929–14935; Ex. 319, 320)

13. Buttermilk, concentrated buttermilk, dried buttermilk, sweet cream buttermilk, concentrated sweet cream buttermilk, and dried sweet cream buttermilk, singly or in combination, are sometimes used in bread making, for purposes similar to those stated for the dairy ingredients specified in finding 8. (R. 75–76, 128, 1627–1629, 1638–1639)

14. Liquid eggs, frozen eggs, dried eggs, egg yolks, frozen yolks, dried yolks, egg white, frozen egg white, and dried egg white, singly or in combination with each other, are sometimes used in bread making, for the purpose of improving the nutritive value and imparting other desired characteristics. (R. 76, 130; Ex. A)

15. As the quantity of egg solids or egg-yolk solids in the dough is increased, the characteristics imparted to the baked product by such solids become more noticeable. The evidence does not establish the point at which the quantity of such solids results in products of identities different from bread and rolls, although the evidence indicates that such point lies between 2 parts and 5 parts for each 100 parts of flour. (R. 131, 2669–2672)

16. In making bread or rolls certain saccharine products are commonly used to furnish fermentable carbohydrates, to control the color of the crust, and to alter the taste, frequently to the extent of imparting some sweetness to the finished product. These include sugar, invert sugar (in sirup or congealed form), light-colored molasses, light-colored brown sugar, refiners' sirup, dextrose, honey, glucose sirup, corn sirup, dried corn sirup, nondiastatic malt sirup, and nondiastatic dried malt sirup. All these products, used either singly or in combination with each other, are satisfactory for the purpose stated. (R. 76–77, 131, 712, 714–715, 740–741, 781, 785, 788, 795–797, 4598–4600, 4607, 4617; Ex. A)

17. Blackstrap molasses and dark-colored brown sugar, by reason of their color and other properties, are unsuitable for use in bread or rolls. Concentrated water extract of raisins and concentrated water extract of prunes have been proposed as saccharine ingredients in bread or rolls, but are not shown to be suitable for this purpose, especially because of their color and taste. (R. 670–672, 691, 743–744, 754–755, 1759–1761)

18. If carbohydrates are desired only for yeast fermentation, the quantity of saccharine substances added generally does not exceed 3 parts by weight, on a dry basis, for each 100 parts by weight of flour. When the baker wishes to produce some minor change in taste or in the appearance of the crumb or crust, increased quantities are used. Such baked products are considered by consumers as ordinary white bread or rolls unless they are definitely sweet or have acquired other definite characteristics from such ingredients. (R. 327, 359, 791, 1046–1047; Ex. D)

19. It is impracticable to prescribe a maximum limit for saccharine ingredients generally in white bread or rolls because of the wide differences in the respective sweetness and other characteristics of such ingredients and because even where sugar alone is used the evidence is not definite as to the quantity above which an article ceases to be ordinary bread and becomes sweet goods, although 16 parts by weight of sugar to each 100 parts by weight of flour appears to be near the average for sweet goods. (R. 2744, 2947, 2979, 2983, 2990; Ex. D)

20. Inactive dry yeast is occasionally used to impart a flavor, sometimes referred to as a "homemade flavor," to bread and rolls. If added in excess of 2 parts per 100 parts by weight of flour used, inactive dry yeast adversely affects the color of the crumb and crust. Inactive yeast of the Saccharomyces cerevisiae type, which is the type of yeast used for leavening, is suitable for the above purpose in quantities up to 2 parts per 100 parts by weight of flour used. Inactive yeast of the Toruplosis utilis variety was also proposed as an optional ingredient of bread and rolls. This type of inactive dry yeast is used to some extent in the United States as an ingredient of animal feeds and was used in Europe as a dietary supplement for humans during the wartime food shortages. Inactive dry yeast of the Toruplosis utilis variety has not been used in bread or rolls in the United States except experimentally. The evidence does not show that there is any demand on the part of bakers for inactive yeast of this variety or that under the conditions under which it is now produced it is suitable for use as an ingredient of bread and rolls. (R. 4707, 4716–4718, 4722–4725, 4728–4729, 15411–15412, 15423–15425, 15430–15433, 15468)

21. Malt sirup, dried malt sirup, malted barley flour, and malted wheat flour, each of which is diastatically active, are frequently used, singly or in combination with each other, in making bread or rolls. These substances are generally used to compensate for a deficiency of natural enzymes in the flour used, and when used for this purpose alone the quantity is limited to about 0.25 percent of the weight of the flour. In certain kinds of hearth bread, however, quantities of malt sirup or dried malt sirup as high as 4 percent, or even higher, are used to improve the crust characteristics, especially the color of crust. (R. 505–509, 517–519, 522–523, 527–530)

22. The desired action of malt flour and diastatically active malt sirups in bread dough is primarily due to their content of certain enzymes that act upon the starch of the flour during the fermentation of the dough. The action of these enzymes is rather complex and affects the baking qualities of the dough in several ways. Recently it has been found that enzymes having a somewhat similar action on the starch of flour can be obtained from media in which certain molds, particularly Aspergillus oryzae, are grown. Purified preparations containing enzymes from Aspergillus oryzae are suitable for use in bread making. (R. 15031–15036, 15057, 15065–15066, 15072–15073, 15226–15228, 15358–15365; Ex. 40)

23. Consumers normally expect white bread and rolls to be essentially products of wheat flour. At various times in the past, however, when there has been a scarcity of wheat flour, other similar grain products, especially corn flour, have been extensively used to replace part of the flour in making bread and rolls. Potato mash is sometimes used to develop a preliminary yeast growth and is then incorporated in the dough. So-called dusting flour, often consisting in whole or in part of farinaceous products other than wheat flour, has long been in common use to prevent the dough from sticking to the receptacles or to machinery; a considerable proportion of such dusting flour becomes incorporated in the dough. Dextrinized starch is believed by some to have the property of retaining moisture in bread after baking. The advisory standards issued by the Secretary of Agriculture for white bread, beginning with the first such standard in 1923, have all recognized the propriety of such practices to the extent of the replacement of not more than 3 percent of the wheat flour by some "other edible farinaceous substance." (R. 27, 30, 34, 77–78, 111–112, 1762–1764)

24. Products that have been used and are suitable for one or more of the purposes stated in finding 23 are corn flour or finely ground corn meal, potato flour, rice flour, cornstarch, milo starch, potato starch, sweet potato starch, and wheat starch. Sometimes these products are wholly or in part dextrinized. Dextrinized wheat flour is also suitable for such use. In recent years soy flour has also been used in small amounts. At times one or more of such starches or flours are used in preparing pastes in which flavors are developed by the action of certain harmless souring organisms. These pastes are dried and the material used as an ingredient of bread or rolls for the purpose of slightly modifying their flavor. (R. 77–78, 105, 111–115, 132–133, 567–568, 4505, 4508, 4540, 4593–4595, 4736–4738, 4750–4751, 4753, 4764, 4782–4783; Ex. M, O)

25. Use in making white bread or rolls of any one or more of the products specified in finding 24, in a total quantity not greater than 3 parts by weight for each 100 parts by weight of wheat flour used, does not run counter to the normal expectation of present-day consumers. (R. 34, 49, 78, 133; Ex. A)

26. Subsequent to the hearing held in 1942, a great many bakers had experimented with the use of various quantities of soy flour in bread. Their experience shows that up to 3 parts of soy flour to 100 parts flour may be used without a substantial change in the physical characteristics of white bread. Within this limit, many bakers wish soy flour recognized as an optional ingredient, as described in finding 24. When bakers use more than this amount of soy flour they do so primarily because they wish to increase the protein content of the bread. As the soy flour content of bread is increased above 3 parts per 100 parts of flour, the taste and color of the bread are progressively changed. Special breads known as wheat-and-soya breads have been sold containing varying proportions of soy flour. No interest was manifested by the persons desiring to use soy flour in bread in ex-

cess of 3 parts per 100 parts of flour in the adoption of a definition and standard of identity for wheat-and-soy bread. (R. 4505–4506, 4539–4540, 4673, 15512–15514)

27. Products referred to as peanut flour and cottonseed flour were proposed for use as optional ingredients in bread and rolls, in quantities up to 3 parts per 100 parts of flour. These products were said to serve the same purposes as the products described in finding 24 and also to contribute substantial nutritive values. Cottonseed flour was not proposed as an ingredient in white bread and rolls. The evidence does not show that these products have been used to any material extent in making bread or rolls or that they are suitable for such use. (R. 538, 548, 613–630, 649, 1772, 3897–3908, 3910, 4572–4574, 4576–4577; Ex. 17)

28. Rolled oats, ground oatmeal, and oat flour were proposed as optional ingredients for inclusion with the products specified in finding 24, on the ground that such oat products are economical and nutritious foods and furnish a distinctive and desirable flavor. The evidence does not establish that any of these products have been used in making white bread or rolls, or their suitability for such use. (R. 1768–1769; Ex. P)

29. The evidence does not establish that the use of the products listed in findings 27 and 28 results in any significant improvement in nutritive properties when the quantities used are not more than 3 parts to each 100 parts of flour; it does indicate that the inclusion of such products in white bread would run counter to the normal expectation of consumers. The evidence furnishes no basis for a determination of what quantities of such products should be used with flour to produce breads of different identities recognizable as such by consumers. (R. 624–627, 633–643, 1769–1772, 3914–3915, 3937–3938, 3942–3945, 4573, 4578)

30. Wheat germ processed in various ways to modify its enzymatic activity and to prevent rancidity has been used as an ingredient in some white bread. The processing may consist of heating it, treating it with potassium bromate, removing part of the wheat germ oil, and possibly of treating it in other ways suggested but not described in the record. Such processed wheat germ was proposed as an optional ingredient for the purpose of imparting flavor and improving some of the physical characteristics of white bread. No proposal was advanced for recognition of the use of unprocessed wheat germ such as that naturally present in small amounts in flour. The testimony regarding benefits from the use of small amounts of processed wheat germ in white bread (1½ to 2 parts by weight of processed wheat germ per 100 parts by weight of flour) is not convincing. On the other hand, there was evidence establishing that the use of processed wheat germ in white bread has led to labeling and advertising claims, based on its vitamin and mineral content, that might confuse consumers with respect to identity and relative nutritive properties of bread and enriched bread. (R. 116–118, 559–572, 576–577, 579–580, 584–585, 589–591, 593–605, 1765–1767, 3292–3293, 3298, 3367–3368, 15534–15535; Ex. ZZ)

31. Ground dehulled soybeans, with or without heat treatment and with or without removal of oil, but which retain their enzymatic activity, exert a bleaching action upon flour in bread dough. The use of such products in dough permits the production of light-colored bread or rolls from unbleached or slightly bleached flour. Substantial quantities of ground dehulled soybeans have been used for this purpose for many years. For this bleaching effect it is not necessary to use more than 0.5 part by weight of such a product to each 100 parts by weight of flour used. (R. 111–113, 165–166, 539–540, 545, 552–555, 3926–3933)

32. In making bread and rolls it has become a widespread practice among bakers to add to the dough small quantities of certain mineral salts, commonly known by such designations as yeast foods, dough conditioners, and bread improvers. Calcium and ammonium salts are used to stimulate the growth of yeast during fermentation. Other salts, which act as oxidizing agents are used to affect the process of fermentation, although the evidence establishes no satisfactory scientific explanation of the mechanism of their action. The evidence indicates that the addition of so-called dough conditioners tends to lessen the variability in the qualities of the dough resulting from differences in characteristics of the flour used, differences in water supply, and other factors, and thereby to facilitate the handling of the dough in mechanized bakeries. (R. 78–82, 133–135, 838–858, 875–876, 892–900, 904–905, 995–999, 1014, 1034–1035, 1065, 1071–1074, 1080)

33. The calcium salts used for the purpose described in finding 32 are monocalcium phosphate, dicalcium phosphate, calcium sulfate, and calcium lactate. Calcium carbonate has a limited use in a so-called double-strength dough conditioner. Ammonium salts used for this purpose are monobasic and dibasic ammonium phosphates, ammonium sulfate, ammonium chloride, ammonium carbonate, and ammonium lactate. Ammonium carbonate and ammonium lactate, however, are no longer of commercial importance. It is not necessary to use any of these salts or any combination of them in a quantity greater than 0.25 part by weight for each 100 parts by weight of flour used. (R. 78–81, 104, 133–135, 831, 838–840, 870, 883–884, 887–888, 990, 992–993, 4195–4196, 14301–14309)

34. The over-all effect of the use of varying kinds and quantities of oxidizing agents in bread dough is usually judged by the change in the size of the loaf in comparison with similar loaves baked from dough to which no oxidizing agents are added. The use of too large a quantity of an oxidizing agent is likely to cause a decrease in loaf volume.

There was no evidence that potassium bromate, potassium iodate, and calcium peroxide in the amounts commonly used leave residues or cause the formation of oxidation products which might make the bread injurious to health. Due to uncertainty as to the end-products resulting from the action of oxidizing agents on the ingredients of bread and to the fact that they leave small residues (potassium bromate leaves a residue of potassium bromide, and potassium iodate a residue of potassium iodide) which serve no useful purpose in bread, it is desirable that the amounts of such substances used be restricted to a minimum. It is not necessary to use any of these oxidizing agents or any combination of them, including the potassium bromate contained in any bromated flour used, in a quantity greater than 0.0075 part by weight for each 100 parts by weight of flour used.

In 1942 sodium chlorite was proposed as an optional oxidizing agent. It was shown by rather limited experimental use to be suitable for use in bread. Although accorded tentative recognition in the proposed order published in 1943, no evidence was presented to show that it has been used commercially or experimentally since that time or that there is any desire on the part of the baking industry to use this product.

Ammonium persulfate and potassium persulfate have been used to a limited extent as ingredients of so-called dough conditioners in the United States. These salts have at times been added to flour in countries other than the United States, for the purpose of affecting the properties of dough and bread made therefrom. There was evidence indicating that dough prepared from flour containing persulfates has been the cause of the sensitization of some of the persons handling it and that frequent handling of such dough caused allergic manifestations (dermatitis). The evidence does not justify the finding that ammonium persulfate and potassium persulfate are suitable ingredients for use in bread or that their use will promote honesty and fair dealing in the interest of consumers. (R. 78–81, 135–136, 840–841, 895–900, 933–935, 990–994, 13527–13528, 13541–13542, 13661–13663, 13694–13695, 13703, 13975, 14128, 14212, 14252, 16337–16344; Ex. 260–263, 271, 289–290, 292–295)

35. A product described as grain infusion was proposed for use as a yeast food and bread improver. It is a mixture of concentrated corn steepwater (neutralized with calcium carbonate) and dextrinized cornstarch, with added ammonium chloride, salt, and potassium bromate. The concentrated steepwater, a byproduct of the starch industry now generally used for cattle feed, is made by concentrating the liquid obtained by steeping corn in water containing 0.15 percent of sulfur dioxide. The so-called grain infusion as sold to the baker contains approximately 0.002 percent of sulfur dioxide, which is oxidized during fermentation and baking. The evidence does not establish that this so-called grain infusion is suitable for use in bread or that it improves the quality of bread otherwise than through the action of the calcium and ammonium salts and the potassium bromate contained in it. (R. 946–981, 1776, 2146–2175, 4106–4112, 4129–4130, 4134)

36. Amino acids, especially cystine, were proposed as a substitute for the

oxidizing agents in bread or rolls. The evidence does not establish the suitability of such acids for this purpose. (R. 1773–1775; Ex. W)

37. Spice is sometimes added to bread or rolls, usually on the surface, but occasionally by incorporation in the dough. Spice oil and spice extracts have been used to a slight extent. Such additions materially affect the flavor of the bread or rolls. Consumers do not ordinarily expect such additions unless announced by appropriate label statement. Such statements which are accurate and informative are "spice added," "with added spice," or such statements in which the common or usual name of the spice is substituted for the word "spice." (R. 84, 1817–1820)

38. Bread is subject to deterioration and spoilage. The most common form of deterioration is staling. Old bread or stale bread is harder than fresh bread, its taste has changed, and it is almost universally regarded as less desirable than fresh bread. The length of time for staleness to develop varies, depending on several factors; but it is the common practice of many bakers to withdraw bread from sale 2 days after baking. Some bakers make a price concession on bread over 1 day old. (R. 435, 1162, 1407–1408, 1438–1440, 2365; Ex. FF, GG)

39. Since the issuance in 1943 of the tentative order proposing definitions and standards of identity for bread, it was discovered that the addition to bread dough of small amounts of certain substances, referred to as surface-active agents or emulsifying agents, causes the bread baked from such dough to be more compressible and to feel softer when squeezed. Soon after this discovery, certain products containing one or more such substances were offered for sale to bakers. (A somewhat similar effect obtained by using mono- and diglycerides is described in findings 5 and 6.) Three classes of compounds were involved. One class includes compounds prepared by reacting sorbitol with a fatty acid. In the reaction the sorbitol loses moisture and the resulting product is a fatty acid ester of sorbitan. Compounds of this class are distributed under the trade name of Spans. Products of a second class are prepared by reacting a sorbitan ester of a fatty acid with ethylene oxide. This reaction makes possible the addition to the sorbitan portion of the molecule of a predetermined number of ethylene-oxide groups. Compounds of this type prepared for use in food products theoretically contain from four to twenty such groups. They are distributed under the trade name of Tweens. A third class of compounds is prepared by reacting ethylene oxide directly with a fatty acid, or by first reacting ethylene oxide with water, forming a glycol, and then reacting this glycol with a fatty acid. There are a great number of compounds possible in each of these three classes, due to the possibility of using different fatty acids and different amounts of the ethylene oxide.

The classes of compounds known as Spans and Tweens were used in the baking industry in a limited way prior to the discovery that some surface-active agents made bread feel softer. Mixtures of Spans or Tweens or both with other substances were sold under trade names and represented for a time as useful to the baking industry as egg substitutes. As bakers became acquainted with the properties of the various special products offered them, a compound of stearic acid and ethylene oxide (or a glycol and stearic acid) containing about 40 percent stearic acid (chemical name polyoxyethylene monostearate; widely used trade names Myrj 45 and Sta-Soft) became the most generally used. It was distributed to the baking industry beginning early in 1947.

During the latter years of the Second World War practically all bakers reduced the proportion of shortening in bread. They began to return to prewar practices after orders of the War Food Administration regulating the use of the various ingredients of bread were rescinded. Shortening at this time was high in price, and there is reason to believe that some bakers were influenced in their decision to use a preparation containing a surface-active agent because of merchandising claims that its use would make possible a reduction in shortening without materially changing the properties of the finished bread.

Representations were made by a number of promoters of the use of polyoxyethylene monostearate that it retarded or prevented the staling of bread. Experience by bakers in the use of polyoxyethylene monostearate showed that 0.5 part to 100 parts of flour in bread dough made measurably softer bread, and that this effect was obtained even if no shortening was used. Experience further showed that breads in which polyoxyethylene monostearate was used remained slightly softer over a period of days than breads of the same composition except that they contained no polyoxyethylene monostearate. Thus bakers using polyoxyethylene monostearate were able to place on the market breads which appealed to the large segment of consumers who choose bread because it feels soft upon squeezing the wrapped loaf. Some bakers using polyoxyethylene monostearate in their bread advertised softness as an index to the freshness of their bread. No bakers, by advertisements or label statements, advised consumers of their use of this chemical to influence the softness of the bread.

Softness and freshness are intimately connected in the minds of purchasers of bread. Undoubtedly a great many purchasers were led to believe by the feeling of softness of breads containing surface-active agents that such bread was not as old as it actually was.

Whether the addition of polyoxyethylene monostearate to bread dough caused the bread to retain the properties of fresh bread, other than softness, for a longer period of time than similar bread without this substance is highly controversial. There was some persuasive testimony that the only significant effect from the addition of polyoxyethylene monostearate was to make the bread softer at the time of baking, without any effect on the rate of hardening or staling thereafter. Findings as to the exact action of this substance in affecting the properties of bread cannot be made with certainty from the evidence. (R. 4290–4291, 4384–4385, 4391, 4394–4404, 4420–4421, 5827–5828, 5835, 5957–5959, 5972–5975, 5977–5979, 5987–5988, 5991–5992, 6258, 6270–6272, 6330, 6362–6363, 6371, 6385, 6392, 7446–7448, 7518–7525, 7600, 7628–7629, 7679–7680, 8930, 9787–9788, 9793–9797, 10293, 10606, 10633, 10651, 10722, 10751, 11165–11193, 11226, 11240–11243, 11599–11601, 11938, 11954–11955, 11973, 12037–12038, 12058, 12083–12084, 12217–12218, 12221–12222, 12784–12785; Ex. 4–6, 57, 58, 96–99, 120, 128, 181–185, 202–206, 226)

40. There was evidence tending to show that some of the polyoxyethlene monostearate prepared for food use contained small amounts of poisonous glycols of low molecular weight, that is, ethylene glycol and diethylene glycol. Due to the type of chemical reaction involved in combining ethylene oxide with water, with fatty acids, or with sorbitan, it is probable that a number of esters of varying molecular weight, including esters of higher and lower molecular weight than planned, are always present. Some polyoxyethylene glycols of quite high molecular weight have been found to cause injury when fed to test animals, and it is possible that small quantities of such substances, as well as esters of quite low molecular weight, are present in some of the polyoxyethylene monostearates sold to bakers. The range in quantity of such deleterious substances that might be present was not shown but the maximum is probably quite small. (R. 7447–7448, 7601–7602, 7628–7629, 7858–7859, 7863–7866, 8363; Ex. 96, 97, 98, 99, 350–354)

41. Experimental feedings to test animals of substances in each of the three classes described indicated that when used in the diet of these animals in amounts several times greater than might be expected in the human diet they had no noticeable effect on the animals. However, when the amounts in the animal diet were increased to 10 percent or more of the dry matter there was some evidence of adverse effects.

The mechanism by which the lower animal body and the human body eliminate these products has been the subject of study in both experimental animals and in human subjects. This scientific work indicates that polyoxyethylene monostearate is largely split into stearic acid and a glycol and that the fatty acid portion is utilized for food. The glycol portion, according to some experimenters, is largely absorbed and later eliminated unchanged in the urine. Other experimenters, however, were never able to trace the fate of all the glycol portion, indicating the possibility of its oxidation in the body or the possibility of its conversion into unrecognized substances. In general, experimental feeding to test animals indicated that only small portions, if any, of compounds of Span and Tween type were utilized for food. These substances appear to be excreted, for the most part, in the feces.

Experiments with polyoxyethylene monostearate and one of the Tweens were made by giving these substances to human subjects, most of whom were in a hospital following operations on the stomach. In the amounts given there

was no indication of injury to these patients, and some indication of increased fat absorption. One of these substances of the Tween class has been used to a limited extent by physicians, with no apparent injury, in attempting to promote the absorption of fat in patients suffering from faulty fat absorption. Experimental feeding of a solution containing Spans and Tweens to a group of college students showed no apparent injury, but control over the subjects was such that not much reliance can be placed on the results reported.

Reports were made of the examination of the urine of persons and of animals to detect the possible appearance of oxalic acid when compounds containing the polyoxyethylene group were fed to them. None of these experiments showed an increase in oxalic acid in the urine which could be ascribed definitely to the ingestion of the polyoxyethylene compounds. However, in some test animals fed large quantities of polyoxyethylene monostearate urinary calculi of undetermined composition were found.

There was testimony indicating the possibility that surface-active agents containing the polyoxyethylene group may influence the absorption in the human digestive tract of substances contained in fats, such as cholesterol, and possibly of other ingredients. This possibility, however, appears to be largely conjectural. (R. 6380, 6480, 6487–6488, 6492–6494, 6496–6497, 6499–6500, 6504–6508, 6516–6522, 6525–6526, 6532, 6540–6546, 6549–6554, 6691–6692, 6910–6911, 6941, 7078, 7296–7300, 7304–7305, 7318–7319, 7383–7384, 7400–7403, 7732, 7751, 7754, 7768, 7796, 7823, 7827, 7955, 7999, 8002–8004, 8140–8142, 8169, 8196, 8303–8304, 8973, 9503, 9508–9511, 9525, 9528–9531, 9537, 9542, 9550, 9567, 9570, 9583, 9586, 10832, 11646, 11781, 11800–11802, 11804, 15630, 15644, 15682, 15716, 15718, 15752, 16115, 16136; Ex. 20, 59, 60–62, 76, 78, 78A, 84–90, 93, 94, 106, 113, 114, 132, 152, 153, 155–161, 163–167, 173, 174, 176, 177, 201, 211, 213, 343–347, 347A, 357, 358)

42. Although the use of surface-active agents in bread may enable consumers to keep such bread longer before it becomes unpalatable, it is doubtful that any substantial number of consumers have benefited by the use in bread of the substances described in finding 39. Deception of some consumers as to the age of bread purchased has resulted from the use in it of polyoxyethylene monostearate. A slight lowering is indicated in the nutritive value of the bread in which compounds containing the polyoxyethylene group are used. The consequences of the use of chemicals having any significant potentiality for harm in any food consumed as extensively and continuously as bread are of great importance to public health. Although there has been no definite evidence of injury from the use of Spans, Tweens, or polyoxyethylene monostearate in amounts in which they are likely to occur in the diet from their use in bread, the investigational work does not definitely establish their safety, and the record does not permit a conclusion that bread containing them is safe for continuous use over the human life span. Apart from their possible toxicity, the record as a whole will not support a finding that it would promote honesty and fair dealing in the interest of consumers to recognize sorbitan esters of fatty acids, polyoxyethylene sorbitan esters of fatty acids, and polyoxyethylene esters of fatty acids as optional ingredients in breads, rolls, and buns. (R. 6492–6494, 6497–6500, 6506–6508, 6522, 6525–6526, 6540, 6542, 6544, 6549–6554, 6716–6720, 6910, 7296–7300, 7304–7305, 7732, 7754, 7768, 7955, 7999, 9379–9380, 9508–9511, 9528–9531, 9537, 9542, 9550, 9567, 9586, 9797, 10832, 11600, 11646, 12218, 12784–12785, 15630, 15644, 15682, 15716, 15718, 16136; Ex. 59–62, 76, 78, 84, 86, 90, 147, 152, 153, 155–158, 160, 161, 163–165, 167, 173, 177, 181–185, 201, 343–346, 357, 358)

43. In addition to staling, bread is subject to spoilage from the growth of mold. If the surface of bread is moist it is a good medium for the growth of mold spores. The temperature of baking effectively destroys any mold spores in the dough, but such spores may be present in the bakery, and bread not suitably protected during and after cooling may become contaminated with such spores. When bread is sliced and wrapped, as is the common practice among large bakeries, the moisture remaining in the bread is held inside the wrapper, keeping the surface of bread moist and so creating a favorable environment for the growth of mold spores which may have accumulated on the surface of the loaf or of the slices prior to wrapping. Unwrapped bread from which moisture can evaporate readily is less likely to become moldy. Mold development on bread is most rapid in warm weather, especially when the humidity is high. (R. 1124–1137, 1140, 1143; 1270, 1481, 1500; Ex. AA)

44. The time necessary for the development of visible mold varies greatly, depending on a number of conditions. Under conditions most favorable to mold growth, a visible speck of mold may develop within 1 or 2 days after exposure of the bread to the spores. Under normal summer conditions, however, several days will elapse between the time of contamination and the appearance of a mold spot sufficiently large to be noticed. (R. 1143, 1409, 1413, 1473, 1490–1491)

45. A considerable number of bakers take no steps to protect their bread from mold other than controls within the bakery which tend to prevent contamination of the bread with mold spores. A few bakers have installed special precautionary devices for this purpose that are elaborate and beyond the means of bakers generally. Methods available to most bakers do not wholly prevent contamination, and where this occurs in sufficient degree and conditions are favorable to mold growth losses of bread may follow. Many bakeries, and probably a majority of wholesale bakeries, have adopted the practice of adding to the dough, at least during summer months, some substance that will retard the growth of mold on the bread. Proposals were made to recognize as optional ingredients for this purpose sodium and calcium propionates and sodium diacetate. (R. 1138–1139, 1151, 1154, 1476–1479, 1673, 1674, 3879–3880, 3986, 4046–4047; Ex. X, QQ)

46. In addition to spoilage from mold, decomposition and spoilage in bread are caused on rare occasions by the growth inside the loaf of a type of bacterium which, in spore form, can survive the temperature of baking. This bacterium, Bacillus mesentericus, causes spoilage which in advanced stages is characterized by an unpleasant odor and a pasty consistency of the center of the loaf. This pasty material will pull out into fine threads, and such bread is said to be "ropy." B. mesentericus is known as the rope-forming organism. (R. 1163–1164, 1166, 1231, 1425, 2658, 2993–2994, 3001, 3820–3822, 4045)

47. Technical experts in the baking industry are not entirely in agreement as to how the rope organism enters bread dough, but they generally agree that the most probable means is through use in preparing the dough of raw materials contaminated with numerous spores of the organism. There is some possibility that spores may be air-borne and enter the dough from the air circulating in the bakery. In order for spoilage from rope organisms to develop in bread there must be a combination of circumstances where a considerable number of spores enter the dough and where the bread is held for some time after baking at a high temperature under conditions whereby the moisture in the bread is retained. Where such a combination of circumstances is present, large losses may occur from such spoilage. (R. 1165–1167, 1169, 1353–1354, 1495, 2190, 3813, 3819, 3824; Ex. HH, II)

48. A considerable number of bakers take no steps for the protection of bread from rope other than to use ingredients sufficiently low in spore content. The ordinary baker, however, has no means of quickly testing ingredients to determine if they are contaminated with rope-forming organisms and must rely upon suppliers to furnish ingredients that are safe to use. Much progress has been made by suppliers in safeguarding their products. Many bakers, however, probably including a majority of wholesale bakers, at some time during the year add some type of ingredient to dough as additional assurance against rope development. (R. 1174, 1294–1298, 1502, 3826, 3832, 3870–3871, 4042, 4044; Ex. HH, WWWW)

49. It was found several years ago that materials that render the dough slightly more acid than normal are effective in preventing the development of the rope organism. The acidity of the finished bread need not be greater than pH 5.0. The necessary increase in acidity is frequently effected by adding about a pint of 100-grain vinegar for each 100 pounds of flour used in the dough. Another product used by bakers for increasing acidity is monocalcium phosphate, which is the acidifying ingredient in phosphated flour. About ½ pound or less of monocalcium phosphate for each 100 pounds of flour usually increases acidity sufficiently for this purpose, or phosphated flour may be used. Other acids that are said not to interfere with yeast growth have also been tried to a limited extent. Lactic acid, in a quantity suffi-

cient to reduce the pH of the bread to not less than 4.5, has recently been found to be a suitable acidifying ingredient of the dough for the purpose of preventing or retarding the growth of certain spore-forming organisms, the spores of which are not destroyed in the baking process. Sodium and calcium propionates have been found to be effective in retarding the growth of rope organism without a significant change in acidity. Sodium diacetate, which liberates acetic acid in the dough, has been used in lieu of vinegar and monocalcium phosphate against the possibility of spoilage due to rope. (R. 137, 1040, 1170, 1174, 1183–1184, 1644, 1674–1679, 3918, 3968–3969, 3976–3977, 4771–4773; Ex. JJ, KK)

50. The quantity of calcium propionate or sodium propionate or both used in white bread for the purposes indicated in findings 45 and 49 need not exceed 0.32 part by weight for each 100 parts by weight of flour used. The quantity of sodium diacetate used for such purposes need not exceed 0.4 part by weight. The quantity of any vinegar used for the purposes indicated in finding 49 need not exceed 1 pint of any vinegar of 100-grain strength for each 100 pounds of flour used, or corresponding amounts of vinegar of less strength to furnish an equivalent amount of acetic acid. The quantity of monocalcium phosphate used for the purposes indicated in finding 49 exceeds the amount used as a yeast food (for which purpose the maximum amount used is 0.25 part for each 100 parts by weight of flour used) but does not exceed 0.75 part for each 100 parts by weight of flour. (R. 1322–1323, 1413, 1486, 1649, 1680, 1687, 3964, 3969, 3976, 3977; Ex. X)

51. The evidence shows that a substantial proportion of bakers do not consider that they have a mold or rope problem and that they use none of the substances referred to in finding 49. Most bakers consider that they do have a mold or rope problem during the months of relatively high temperature, particularly when the humidity is high, and these bakers use such substances during those months. Some bakers consider that they have a mold and rope problem throughout the entire year and use such substances continuously. The evidence points to the possibility that the use of such substances may result in practices contrary to consumer interest, but does not establish that such practices exist or are likely to develop to any material extent. (R. 1412, 1428–1429, 1453–1459, 1478–1479, 1495, 1697, 2187–2191, 3003–3005, 3879, 3880, 3986, 4046–4047; Ex. QQ)

52. All the substances used as set forth in findings 49 and 50 act as preservatives in bread and rolls in that they delay spoilage by certain micro-organisms. All such substances, except vinegar are chemicals within the usual meaning of the term. (R. 2046–2048, 2050)

53. The foods commonly and usually known as milk bread and milk rolls or milk buns differ from bread and rolls primarily in that they contain a certain minimum of milk solids. Findings 2 to 7 and 14 to 53, inclusive, are applicable to milk bread and milk rolls. (R. 35, 1830, 1831, 2415, 2527, 2586; Ex. A)

54. Milk bread is prepared in the home, and to a considerable extent in commercial bakeries, by using milk as the sole ingredient for moistening the flour and other ingredients to make the dough. However, many bakers use, instead of milk, various milk products (with or without water), containing essentially the same quantity of milk solids as would be supplied by milk when it is used as the sole wetting agent. Milk products used for this purpose, and which are suitable for such use, are concentrated milk, evaporated milk, sweetened condensed milk, dried milk, and reconstituted milk (see finding 56). (R. 1836–1837, 2527–2528; Ex. A, III)

55. The solids of milk may be divided into two well-recognized components, milk fat and nonfat milk solids. The relative proportion of fat and nonfat milk solids varies somewhat, but in milk of average composition as delivered to consumers the quantity of nonfat milk solids is not more than 2.3 times the quantity of milk fat. In milks of greater richness than average milk the fat content may rise to a point where the nonfat milk solids is about 1.2 times the milk fat. (R. 1838, 2371–2383, 2529; Ex. 4, AAA, LLL)

56. The ingredients used to supply milk-constituent solids in the reconstitution of milk for making milk bread are skim milk, concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, sweetened condensed partly skimmed milk, and nonfat dry milk solids or any two or more of these, combined with butter or cream or both. Unless a maximum limit is set on the proportion of nonfat dry milk solids to milk fat in reconstituting milk, abuses can easily arise through the use of decreasing quantities of milk fat and increasing quantities of the less expensive nonfat milk solids. It is reasonable to require that when reconstituted milk is used the proportion of nonfat milk solids to milk fat fall within the range set forth in finding 55. (R. 444–447, 1830, 1833, 1836, 1838, 1846, 2507, 2509; Ex. 2, III)

57. The quantity of water necessary to make flour into dough varies somewhat, but it is generally about 60 pounds to each 100 pounds of flour, and in practically no case is less than 58 pounds to 100 pounds of flour. In milk of average composition, 58 pounds of moisture is associated with 8.23 pounds of milk solids. A reasonable minimum requirement for milk solids in milk bread made with dairy ingredients other than fluid milk is 8.2 pounds to each 100 pounds of flour. Because of variation in the total solids content of fluid milk and because of differences in the quantity of moisture absorbed in making the dough, it would not be reasonable to prescribe a minimum based on the average composition of milk for the milk solids content of milk bread when fluid milk is used as the sole moistening ingredient. (R. 452–454, 1840, 2445–2446, 2565, 2566, 2607)

58. Milk bread is generally considered by consumers to be made from milk and not from buttermilk. Buttermilk and its products, such as those listed in finding 13, are not appropriate ingredients of milk bread. (R. 443, 1840–1842, 2419)

59. In the announcement of the hearing definitions and standards of identity were proposed for:

Cream bread and cream rolls or cream buns.

Butter bread and butter rolls or butter buns.

Egg bread and egg rolls or egg buns.

Butter and egg bread and butter and egg rolls or butter and egg buns.

Honey bread and honey rolls or honey buns.

Milk and honey bread and milk and honey rolls or milk and honey buns.

In each instance the American Bakers Association proposed other definitions and standards differing from the proposals for hearing chiefly in that they would require substantially lesser amounts of the ingredients indicated by the names of the various kinds of bread and rolls or buns. (R. Ex. 1. Also see page references under finding 60)

60. The quantities of the characterizing ingredients specified in the published proposal and the quantities recommended by the American Bakers Association are shown in the following tabulation ("parts" signify parts by weight for each 100 parts by weight of flour used in preparing dough):

	Published proposals	Proposals by American Bakers Association
Cream bread, Cream rolls, Cream buns	12 parts of milk fat from cream or combination of milk and nonfat milk solids in certain specified proportions.	4 parts of milk fat.
Butter bread, Butter rolls, Butter buns	12 parts of milk fat from butter	Do.
Egg bread, Egg rolls, Egg buns	5 parts of egg solids	2 parts of egg solids.
Butter and egg bread, Butter and egg rolls, Butter and egg buns	12 parts of milk fat from butter, 5 parts egg solids.	4 parts of milk fat, 2 parts of egg solids.
Honey bread, Honey rolls, Honey buns	16 parts of honey solids	4 parts of honey solids.[1]
Milk and honey bread, Milk and honey rolls, Milk and honey buns	Milk content same as for milk bread, 16 parts honey solids.	Milk content same as for milk bread, 4 parts of honey solids.

[1] Three parts of honey solids was recommended by a witness introduced by the American Bakers Association. (R. 2668, 2670)

(R. 1849–1854, 2423–2425, 2427–2428, 2476–2479, 2552–2555, 2568, 2623–2625, 2638, 2644–2645, 2673, 2703, 2713, 2717, 2739–2746, 2755–2757, 2759–2760, 2795–2796, 2820, 2837–2838, 2846, 2933, 2965, 3046–3047, 3049–3051, 3061, 3068)

61. There have been sold at times under the names of the products listed in finding 60, or under similar names, breads containing little or none of the ingredients for which the breads have been named. This practice has not been widespread. The amount of such bread is small in comparison with the total amount of bread sold, but this practice has tended to mislead the consumer, giving the impression that these ingredients are used in such substantial amounts as to characterize the breads. (R. 1851, 1854, 2339–2340, 2476, 2478, 2497–2498, 2617–2620, 2625, 2627, 2631, 2640, 2740–2742, 2788, 2910–2911, 3044–3046, 3058–3060; Ex. III)

62. The evidence does not establish that products containing these ingredients in the quantities proposed by the American Bakers Association (see finding 60) are distinguishable by the ordinary consumer from the product commonly known as bread or white bread. It is not shown that benefit to consumers would result from the promulgation of definitions and standards of identity for these products as proposed by the American Bakers Association. (R. 2495, 2552–2553, 2555, 2569, 2621–2624, 2632, 2641, 2672, 2742–2743, 2795–2797, 2807, 2820, 3036–3037, 3039, 3046, 3049, 3051)

63. There is not shown to be, nor is there likely to develop, a demand on the part of consumers for bread or rolls containing the quantities of these ingredients in the published proposals that were supported by the Food and Drug Administration (see finding 60). The evidence does not establish that such proposed definitions and standards of identity would be reasonable. (R. 1851, 2427, 2476, 2498, 2553, 2570, 2700, 2713–2715, 2867–2868, 2931–2932, 2965–2966)

64. The foods commonly and usually known as raisin bread and raisin rolls or raisin buns differ from bread and rolls primarily in that raisins are added to the dough before baking. Seedless (or seeded) raisins are suitable for such use. They are usually washed and are often soaked in water before being added to the dough. Except as noted in findings 66 and 67, findings 2 to 52, inclusive (except finding 9), are applicable to raisin bread and raisin rolls. (R. 35–36, 3076–3084, 3086–3091, 3093–3097)

65. The quantity of raisins used in making raisin bread varies somewhat. A minimum requirement for raisins based on the weight of the raisins in the loaf was contained in the advisory standard for raisin bread promulgated some years ago. A more understandable requirement from the standpoint of the baker is a specification of the weight of raisins (before soaking or washing) used with each 100 parts by weight of flour. The requirement of the advisory standard calculated to this basis is about 35 parts of raisins to each 100 parts of flour. In recent years it has become the practice of most bakers to use substantially more raisins, and a minimum requirement of 50 parts of raisins to each 100 parts of flour now conforms more nearly to consumer preference and good bakery practice. (R. 35–36, 3076–3080, 3088–3090, 3093–3097; Ex. 2, III, TTT, UUU, VVV)

66. When making raisin bread some bakers use as a saccharine ingredient a raisin sirup made by concentrating a water extract of raisins (referred to in finding 16). Such an extract is suitable for use in raisin bread, but such raisin extractives as are incorporated in this manner do not take the place of raisins used in making the raisin bread. Raisin bread and raisin rolls are sometimes prepared with an icing or frosting. (R. 3080, 3125)

67. The method of determining total solids, described in finding 4, must be modified slightly to be applicable to raisin bread and raisin rolls, in order to insure the proper mixing of raisins in the sample. This can be accomplished by passing the sample twice through a food chopper and then taking a portion for solids determination without attempting to pass the ground sample through a 20-mesh sieve. (R. 3086–3087; Ex. 2)

68. The foods commonly and usually known as whole wheat bread, graham bread, entire wheat bread, and whole wheat rolls, graham rolls, wheat rolls, or whole wheat buns, graham buns, and entire wheat buns differ from white bread and white rolls only in that the dough is made with whole wheat flour or bromated whole wheat flour, and no flour, bromated flour, or phosphated flour is used therein. Findings 2 to 52, inclusive (except finding 9), are applicable to whole wheat bread and whole wheat rolls, except that the maximum limit for propionates (see finding 50) is 0.38 part by weight to each 100 parts by weight of whole wheat flour used. (R. 34–35, 1323, 1413, 3126–3135, 3160–3161; Ex. 2, A)

69. Several different kinds of bread and rolls are prepared which differ from white bread and white rolls only in that the dough is made by using various mixtures of two or more of the wheat ingredients flour (including bromated flour and phosphated flour), whole wheat flour, cracked wheat, and crushed wheat. In order to obtain in finished bread and rolls of these kinds the characteristics of each of the wheat ingredients used, it is necessary that the quantity of each such ingredient be not less than 20 percent by weight of the mixture of wheat ingredients used. Findings 2 to 52, inclusive (except finding 9), are applicable to bread and rolls of these kinds, except that the maximum limit for propionates (see finding 50) is 0.38 part by weight for each 100 parts by weight of the mixture of wheat ingredients. (R. 38, 1323, 1413, 3135–3158, 3160–3161; Ex. 5, 6, 7)

70. Bread and rolls of these kinds are ordinarily labeled with the word "bread" or "rolls," preceded by the name of one of the wheat ingredients (for example, "cracked wheat bread"). Consumers are confused as to the composition of such products by the failure to disclose in the name other wheat ingredients present in characterizing quantities. Names for them which are accurate and informative are the words "bread," "rolls," and "buns," as the case may be, preceded by words which show the wheat ingredients used, in the order of their predominance, if any, by weight in the mixture (for example, "white and whole wheat bread"). (R. 3135–3158; Ex. 5, 6, 7)

71. "Enriched bread" and "enriched rolls" or "enriched buns" are the common and usual names of baked products identical with bread and rolls, respectively, except that they contain added nutrients and are not subject to the limitations indicated in finding 9. The reasons for enriching flour and for regulating such enrichment are applicable to enriched bread and enriched rolls; such reasons are set forth in findings 33 to 41, inclusive, of the order prescribing a definition and standard of identity for enriched flour (6 F. R. 2574), as modified and supplemented by findings 1 to 11, inclusive, of the order amending that definition and standard of identity (8 F. R. 9115). The basis for requiring or permitting the particular enriching ingredients and the particular quantities thereof specified in such findings is also applicable to enriched bread and enriched rolls. Findings 2 to 52, inclusive (except findings 9 and 30), are applicable to enriched bread and enriched rolls. (R. 3241–3255)

72. The quantities of vitamins and minerals in enriched bread and enriched rolls are those which result from the use of enriched flour or enriched bromated flour in lieu of flour, bromated flour, or phosphated flour. These quantities may be contributed by any of the following methods, or by any two or more of them in combination:

1. Enriched flour or enriched bromated flour is used, in whole or in part.

2. The substances used for enriching flour (including wheat germ or partly defatted wheat germ in a quantity not more than 5 parts by weight to each 100 parts of flour, bromated flour, and phosphated flour used) are added in making the dough, under the conditions permitted by 21 CFR 15.10, for the addition of such substances in preparing enriched flour.

3. Ingredients of bread which contain such vitamins or minerals (e. g., yeast, dried skim milk, monocalcium phosphate) are used within the limits, if any, for such use in bread. (R. 3241; Supp. R. 375, 843, 893, 900, 958, 961)

73. It would not be reasonable to subject enriched bread or enriched rolls to any requirement for or limitation on enrichment that cannot be met in ordinary commercial practice by the use of any enriched flour which conforms to the definition and standard of identity prescribed in 21 CFR 15.10. (R. 3320)

74. The flour content of enriched bread and enriched rolls varies from a minimum of about 60 percent to a maximum of about 75 percent, depending upon such factors as the quantity of ingredients other than flour used and the moisture content of the finished products. In baking such products there is some loss of vitamins, mostly through destruction in the crust. Such losses of niacin, riboflavin, and vitamin D are negligible, and in the cases of niacin and riboflavin are compensated by some contribution of these vitamins by yeast and other ingredients commonly used. Except as noted for thiamine, riboflavin, and calcium in findings 75, 76, and 77, minima for the vitamins and minerals

in enriched bread and enriched rolls of 60 percent of the minima prescribed for enriched flour, and maxima of 75 percent of the maxima for enriched flour, are, when rounded off to the nearest significant decimal point, reasonable limits when enriched flour is used to make enriched bread and enriched rolls. On this basis each pound of enriched bread or enriched rolls contains not less than 10 milligrams nor more than 15 milligrams of niacin; not less than 8 milligrams nor more than 12.5 milligrams of iron; and when the optional ingredient vitamin D is used, not less than 150 U. S. P. units nor more than 750 U. S. P. units of such vitamin. It would not be reasonable to prescribe minima and maxima for vitamins and minerals, when they are added in making the dough, different from the minima and maxima prescribed when enriched flour is used. An unnecessarily wide spread between minima and maxima would likely lead to competitive increases between manufacturers, accompanied by such advertising claims as would confuse consumers as to their nutritionary needs and the value of enriched bread in supplying those needs. Consumer understanding of the value of enriched bread will be promoted by requiring its composition to be as nearly uniform as practicable as to both quantities and kinds of nutritive factors present. (R. 3241–3252, 3306, 3466–3472, 3474–3488, 3692–3696, 3770–3782, 3786–3800; Supp. R. 287, 362–364, 645, 648, 649, 844–854)

75. In baking enriched bread and enriched rolls losses of thiamine are appreciable. However, if flour enriched to the minimum of 2 milligrams of thiamine per pound is used there is sufficient contribution of thiamine from the yeast and other ingredients customarily added that in common commercial practice the finished products contain not less than 1.1 milligrams of thiamine per pound. If flour enriched to the maximum of 2.5 milligrams per pound is used, the thiamine content of the finished products, after due allowances are made for contributions from such ingredients and for baking losses, will not exceed 1.8 milligrams per pound. (R. 3242–3251, 3466–3472, 3474–3488, 3770–3782; Supp. R. 363–368, 372, 647, 844–854)

76. Yeast and milk or its products used in making enriched bread and rolls may contribute as much as 0.48 milligram of riboflavin per pound of bread or rolls. When these are used with enriched flour containing 1.5 milligrams of riboflavin per pound, the riboflavin content of the enriched bread or enriched rolls may approach 1.6 milligrams per pound. When milk and its products are not used, and the enriched flour contains the minimum 1.2 milligrams of riboflavin per pound, the riboflavin content of the enriched bread or enriched rolls may fall to nearly 0.7 milligram per pound. (Supp. R. 844, 848)

77. Nonfat dry milk solids, so-called bread improvers, rope inhibitors, and other optional ingredients used in making bread and rolls may contribute nearly 300 milligrams of calcium per pound to bread or rolls. When these are used with enriched flour containing 625 milligrams of calcium per pound, the calcium content of the enriched bread or enriched rolls may approach 800 milligrams per pound, particularly if water used in making the dough is high in calcium. When these are not used and the enriched flour contains the minimum of 500 milligrams of calcium per pound the calcium content of the enriched bread or enriched rolls may fall to about 300 milligrams per pound. (Supp. R. 849, 858)

78. The following are reasonable limits for the specified vitamins and minerals in enriched bread and enriched rolls or enriched buns:

	Minimum	Maximum
Required ingredients:		
Thiamine	1.10 mg. per lb.	1.8 mg. per lb.
Niacin	10.0 mg. per lb.	15.0 mg. per lb.
Riboflavin	0.7 mg. per lb.	1.6 mg. per lb.
Iron	8.0 mg. per lb.	12.5 mg. per lb.
Optional ingredients:		
Calcium	300 mg. per lb.	800 mg. per lb.
Vitamin D	150 U. S. P. units per lb.	750 U. S. P. units per lb.

(Supp. R. 153, 157, 159, 160–162, 221, 278–280, 312–313, 386–388, 773–774, 797–798, 843–848, 888)

79. Several proposals were made to require label declarations of certain optional ingredients used in bread. There was testimony indicating that some ingredients of bread are causes of allergic manifestations, and that consumers who are sensitive to such ingredients might be benefited by label declaration of these ingredients. There was conflicting testimony as to the prevalence of food allergies and the extent to which the ingredients of bread are the causative agents. The evidence does not indicate that a significant proportion of consumers are sensitive to any particular optional ingredient whose presence in bread would not be expected without label declaration, or would benefit by label declarations of any or all of the optional ingredients used in bread.

A witness representing the Union of Orthodox Jewish Congregations of America, Inc., recommended that the origin and type of shortening used in bread be stated on the label, so that those persons who wished to observe the Jewish dietary laws might avoid the purchase of bread containing "non-kosher" fat. It was not shown that a significant number of persons observing the Jewish dietary laws would benefit by such a label declaration.

A witness appearing on behalf of the American Home Economics Association recommended that bread be labeled to show all the ingredients used in excess of 1 percent of the weight of the flour, the number of calories in a specified unit of weight, the percentage of protein in the loaf, and the maximum percentage of water in the loaf. Interest in such labeling, except in the case of bread and rolls represented for or purporting to be for special dietary use, is restricted to small groups. Requirements for informative labeling of foods for special dietary uses are contained in regulations adopted under authority of section 403 (j) of the Federal Food, Drug, and Cosmetic Act (21 U. S. C. 343 (j)). (R. 5635–5640, 14596–14630, 14685–14687, 14729–14730, 14743, 14744–14748, 14752–14758, 14765, 14768, 14782–14783, 14809–14810, 14812–14813, 14839, 14847–14848, 15545–15548)

Conclusions. Upon consideration of the whole record and the foregoing findings of fact, it is concluded that the adoption of the following definitions and standards of identity for various kinds of breads and rolls or buns will promote honesty and fair dealing in the interest of consumers:

§ 17.1 *Bread, white bread, and rolls, white rolls, or buns, white buns; identity; label statement of optional ingredients.* (a) Each of the foods bread, white bread, rolls, white rolls, buns, white buns is prepared by baking a kneaded yeast-leavened dough, made by moistening flour with water or with one or more of the optional liquid ingredients specified in this section or with any mixture of water and one or more of such ingredients. The term "flour," unqualified, as used in this section, includes flour, bromated flour, and phosphated flour. The potassium bromate in any bromated flour used and the monocalcium phosphate in any phosphated flour used shall be deemed to be optional ingredients in the bread or rolls. Each of such foods is seasoned with salt, and in its preparation one or more of the optional ingredients prescribed by subparagraphs (1) to (14), inclusive, of this paragraph may be used:

(1) Shortening, which may contain lecithin and which may contain not more than 25 percent by weight of mono- and diglycerides of fat-forming fatty acids.

(2) Milk, concentrated milk, evaporated milk, sweetened condensed milk, dried milk, skim milk, concentrated skim milk, evaporated skim milk, sweetened condensed partly skimmed milk, sweetened condensed skim milk, nonfat dry milk solids, or any combination of two or more of these; except that any such ingredient or combination, together with any butter and cream used, is so limited in quantity or composition as not to meet the requirements for milk or dairy ingredients prescribed for milk bread by § 17.3.

(3) Buttermilk, concentrated buttermilk, dried buttermilk, sweet cream buttermilk, concentrated sweet cream buttermilk, dried sweet cream buttermilk, cheese whey, concentrated cheese whey, dried cheese whey, milk proteins, or any combination of two or more of these.

(4) Liquid eggs, frozen eggs, dried eggs, egg yolks, frozen egg yolks, dried yolks, egg white, frozen egg white, dried egg white, or any combination of two or more of these.

(5) Sugar, invert sugar (in congealed or sirup form), light-colored brown sugar, refiner's sirup, dextrose, honey, corn sirup, glucose sirup, dried corn sirup, dried glucose sirup, nondiastatic malt sirup, nondiastatic dried malt sirup, molasses (except blackstrap molasses), or any combination of two or more of these.

(6) Malt sirup, dried malt sirup, malted barley flour, malted wheat flour,

each of which is diastatically active; harmless preparations of enzymes obtained from Aspergillus oryzae; or any combination of two or more of these.

(7) Inactive dried yeast of the genus Saccharomyces cerevisiae; but the total quantity thereof is not more than 2 parts for each 100 parts by weight of flour used.

(8) Harmless lactic-acid producing bacteria.

(9) Corn flour (including finely ground corn meal), potato flour, rice flour, wheat starch, cornstarch, milo starch, potato starch, sweet potato starch (any of which may be wholly or in part dextrinized), dextrinized wheat flour, soy flour, or any combination of two or more of these; but the total quantity thereof is not more than 3 parts for each 100 parts by weight of flour used.

(10) Ground dehulled soybeans, which may be heat-treated and from which oil may be removed, but which retain enzymatic activity; but the quantity thereof is not more than 0.5 part for each 100 parts by weight of flour used.

(11) Calcium sulfate, calcium lactate, calcium carbonate, ammonium phosphates, ammonium sulfate, ammonium chloride, monocalcium phosphate, dicalcium phosphate, or any combination of two or more of these; but the total quantity of such ingredients (not including the monocalcium phosphate in any phosphated flour used) is not more than 0.25 part for each 100 parts by weight of flour used.

(12) Potassium bromate, potassium iodate, calcium peroxide, or any combination of two or more of these; but the total quantity thereof (including the potassium bromate in any bromated flour used) is not more than 0.0075 part for each 100 parts by weight of flour used.

(13) (i) Monocalcium phosphate, but the total quantity thereof, including the quantity in any phosphated flour used and any quantity added as permitted by subparagraph (12) of this paragraph, is more than 0.25 part but not more than 0.75 part by weight for each 100 parts by weight of flour used; or

(ii) A vinegar, in a quantity equivalent in acid strength to not more than 1 pint of 100-grain distilled vinegar for each 100 pounds of flour used; or

(iii) Calcium propionate, sodium propionate, or any mixture of these, but the total quantity thereof is not more than 0.32 part for each 100 parts by weight of flour used; or

(iv) Sodium diacetate, but the quantity thereof is not more than 0.4 part for each 100 parts by weight of flour used; or

(v) Lactic acid, in such quantity that the pH of the finished bread is not less than 4.5.

(14) Spice, with which may be included spice oil and spice extract.

Each of such foods contains not less than 62 percent of total solids, as determined by the method prescribed in "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," Sixth Edition 1945, page 260, section 20.84 (a), "Total Solids in Entire Loaf of Bread * * * Official," except that if the baked unit weighs 1 pound or more one entire unit is used for the determination, and if the baked unit weighs less than 1 pound, such number of entire units as weigh 1 pound or more is used for the determination.

(b) Bread, white bread is baked in units each of which weighs one-half pound or more after cooling. Rolls, white rolls, and buns, white buns are baked in units each of which weighs less than one-half pound after cooling.

(c) (1) When any optional ingredient, except a vinegar, permitted by paragraph (a) (13) of this section is used, the label shall bear the statement "_____ added to retard spoilage," the blank being filled in with the name by which the ingredient used is designated in such paragraph.

(2) When an optional ingredient permitted by paragraph (a) (14) of this section is used, the label shall bear the statement "spiced" or "spice added" or "with added spice"; but in lieu of the word "spice" in such statements, the common or usual name of the spice may be used.

(3) Wherever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the words and statements specified in this paragraph shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter.

§ 17.2 *Enriched bread and enriched rolls or enriched buns; identity; label statement of optional ingredients.* (a) Each of the foods enriched bread, enriched rolls, enriched buns conforms to the definition and standard of identity, and is subject to the requirement for label statement of optional ingredients, prescribed for bread by § 17.1 (a) and (c), except that:

(1) Each such food contains in each pound not less than 1.1 milligrams and not more than 1.8 milligrams of thiamine, not less than 0.7 milligram and not more than 1.6 milligrams of riboflavin, not less than 10.0 milligrams and not more than 15.0 milligrams of niacin or niacinamide, and not less than 8.0 milligrams and not more than 12.5 milligrams of iron (Fe).

(2) Each such food may also contain as an optional ingredient added vitamin D in such quantity that each pound of the finished food contains not less than 150 U. S. P. units and not more than 750 U. S. P. units of vitamin D.

(3) Each such food may also contain as an optional ingredient added harmless calcium salts in such quantity that each pound of the finished food contains not less than 300 milligrams and not more than 800 milligrams of calcium (Ca).

(4) Each such food may also contain as an optional ingredient wheat germ or partly defatted wheat germ; but the total quantity thereof, including any wheat germ or partly defatted wheat germ in any enriched flour used, is not more than 5 percent of the flour ingredient.

(5) Enriched flour may be used, in whole or in part, instead of flour.

(6) The limitation prescribed by § 17.1 (a) (2) on the quantity and composition of milk and dairy ingredients does not apply.

As used in this section, the term "flour," unqualified, includes bromated flour and phosphated flour; the term "enriched flour" includes enriched bromated flour. The prescribed quantity of any substance referred to in subparagraphs (1), (2), and (3) of this paragraph may be supplied, or partly supplied, through the use of enriched flour; through the direct addition of such substance under the conditions permitted by § 15.10 of this chapter for supplying such substance in the preparation of enriched flour; through the use of any ingredient containing such substance, which ingredient is required or permitted by § 17.1 (a) within the limits, if any, prescribed by such section, as modified by subparagraph (6) of this paragraph; through the use of wheat germ; or through any two or more of such methods.

(b) Enriched bread is baked in units each of which weighs one-half pound or more after cooling. Enriched rolls or enriched buns are baked in units each of which weighs less than one-half pound after cooling.

§ 17.3 *Milk bread and milk rolls or milk buns; identity; label statement of optional ingredients.* (a) Each of the foods milk bread, milk rolls, milk buns conforms to the definition and standard of identity, and is subject to the requirements for label statement of optional ingredients, prescribed for bread and rolls or buns by § 17.1 (a) and (c), except that:

(1) Milk is used as the sole moistening ingredient in preparing the dough; or in lieu of milk one or more of the dairy ingredients prescribed in paragraph (c) of this section is used, with or without water, in a quantity containing not less than 8.2 parts by weight of milk solids for each 100 parts by weight of flour used (including any bromated flour or phosphated flour used).

(2) No ingredient permitted by § 17.1 (a) (3) is used.

(b) Milk bread is baked in units each of which weighs one-half pound or more after cooling. Milk rolls or milk buns are baked in units each of which weighs less than one-half pound after cooling.

(c) The dairy ingredients referred to in paragraph (a) (1) of this section are concentrated milk, evaporated milk, sweetened condensed milk, dried milk, and a mixture of butter or cream or both with skim milk, concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, sweetened condensed partly skimmed milk, nonfat dry milk solids, or any two or more of these, in such proportion that the weight of nonfat milk solids in such mixture is not more than 2.3 times and not less than 1.2 times the weight of the milk fat therein.

§ 17.4 *Raisin bread and raisin rolls or raisin buns; identity; label statement of optional ingredients.* (a) Each of the foods raisin bread, raisin rolls, raisin buns conforms to the definition and standard of identity, and is subject to the requirements for label statement of optional ingredients, prescribed for

bread and rolls or buns by § 17.1 (a) and (c), except that:

(1) Not less than 50 parts by weight of seeded or seedless raisins are used for each 100 parts by weight of flour used (including any bromated flour or phosphated flour used).

(2) Water extract of raisins may be used, but not to replace raisins.

(3) The baked units may bear icing or frosting.

(4) The limitation prescribed by § 17.1 (a) (2) on the quantity and composition of dairy ingredients does not apply.

(5) In determining its total solids, instead of following the direction "Grind sample just to pass a 20-mesh sieve" (Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists, Sixth Edition, 1945, page 260, section 20.84 (a), under "Total Solids in Entire Loaf of Bread * * * Official"), comminute the sample by passing it twice through a food chopper.

(b) Raisin bread is baked in units each of which weighs one-half pound or more after cooling. Raisin rolls or raisin buns are baked in units each of which weighs less than one-half pound after cooling.

§ 17.5 *Whole wheat bread, graham bread, entire wheat bread, and whole wheat rolls, graham rolls, entire wheat rolls, or whole wheat buns, graham buns, entire wheat buns; identity; label statement of optional ingredients.* (a) Each of the foods whole wheat bread, graham bread, entire wheat bread, whole wheat rolls, graham rolls, entire wheat rolls, whole wheat buns, graham buns, entire wheat buns conforms to the definition and standard of identity, and is subject to the requirements for label statement of optional ingredients, prescribed for bread, rolls, and buns by § 17.1 (a) and (c), except that:

(1) The dough is made with whole wheat flour, and no flour is used therein.

(2) The limitation prescribed by § 17.1 (a) (2) on the quantity and composition of dairy ingredients does not apply.

(3) The total weight of calcium propionate, sodium propionate, or mixtures of these used is not more than 0.38 part for each 100 parts by weight of the whole wheat flour used.

As used in this section, the term "flour," unqualified, includes flour, enriched flour, bromated flour, enriched bromated flour, and phosphated flour; the term "whole wheat flour" includes whole wheat flour and bromated whole wheat flour. The potassium bromate in any bromated whole wheat flour used shall be deemed to be an optional ingredient in the whole wheat bread or whole wheat rolls.

(b) Whole wheat bread, graham bread, or entire wheat bread is baked in units each of which weighs one-half pound or more after cooling. Whole wheat rolls, graham rolls, entire wheat rolls, whole wheat buns, graham buns, or entire wheat buns are baked in units each of which weighs less than one-half pound after cooling.

§ 17.6 *Breads and rolls or buns made with combinations of flour, whole wheat flour, cracked wheat, and crushed wheat; identity; label statement of optional ingredients.* (a) The foods for which definitions and standards of identity are prescribed by this section are the foods each of which conforms to the definition and standard of identity, and is subject to the requirements for label statement of optional ingredients, prescribed for bread and rolls by § 17.1 (a) and (c), except that:

(1) The bread, roll, or bun is made with a combination of two or more of the following wheat ingredients, in which the weight of each such ingredient used is not less than 20 percent of the weight of such combination:

(i) Flour (including bromated flour and phosphated flour).

(ii) Whole wheat flour (including bromated whole wheat flour).

(iii) Cracked wheat.

(iv) Crushed wheat.

(2) The limitation prescribed by § 17.1 (a) (2) on the quantity and composition of dairy ingredients does not apply.

(3) The total weight of calcium propionate, sodium propionate, or mixtures of these used is not more than 0.38 part for each 100 parts by weight of such mixture.

(b) The potassium bromate in any bromated flour or bromated whole wheat flour used and the monocalcium phosphate in any phosphated flour used shall be deemed to be optional ingredients in the finished baked products.

(c) If such food is baked in units each of which weighs one-half pound or more after cooling, the name of such food is "_____ bread"; if in units each of which weighs less than one-half pound after cooling, "_____ rolls" or "_____ buns," the blank being filled in each instance with the names of the wheat ingredients, in the order of predominance, if any, by weight of such ingredients in the combination used in making the bread, as for example, "white and whole wheat bread." For the purposes of this provision, the name of the wheat ingredient specified in paragraph (a) (1) (i) of this section is "white"; in paragraph (a) (1) (ii) is "whole wheat," "graham," or "entire wheat"; in paragraph (a) (1) (iii) is "cracked wheat"; and in paragraph (a) (1) (iv) is "crushed wheat."

§ 17.7 *Unsalted breads and rolls or buns; identity; label statement of optional ingredients.* (a) Unsalted breads and unsalted rolls or buns are the foods each of which conforms to the definition and standard of identity, and is subject to the requirements for label statement of optional ingredients, prescribed for kinds of breads and rolls or buns by §§ 17.1, 17.2, 17.3, 17.4, 17.5, and 17.6, except that no salt is used in their preparation.

(b) The name of each kind of unsalted bread and unsalted roll or bun is the word "unsalted," followed by the name of the kind of bread and roll or bun prescribed in the definition and standard of identity therefor.

Any interested person whose appearance was filed at the hearing may, within 30 days from the date of publication of this tentative order in the FEDERAL REGISTER, file with the Hearing Clerk, Federal Security Agency, Room 5109, Federal Security Building, Fourth Street and Independence Avenue SW., Washington, D. C., written exceptions thereto. Exceptions shall point out with particularity the alleged errors in this tentative order and shall contain specific references to the pages of the transcript of the testimony or to the exhibits on which such exceptions are based. Such exceptions may be accompanied by a memorandum or brief in support thereof. Exceptions and accompanying memoranda or briefs shall be submitted in quintuplicate.

Dated: July 31, 1950.

[SEAL] JOHN L. THURSTON,
Acting Administrator.

[F. R. Doc. 50-6921; Filed, Aug. 7, 1950; 8:48 a. m.]

[21 CFR, Part 20]

[Docket No. FDC-34 (a)]

ICE CREAM, FROZEN CUSTARD, SHERBET, WATER ICES, AND RELATED FOODS; DEFINITIONS AND STANDARDS OF IDENTITY

NOTICE OF HEARING

In the matter of definitions and standards of identity for ice cream, frozen custard, sherbet, water ices, and related foods:

Notice is hereby given that the Federal Security Administrator, in accordance with the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055; 21 U. S. C. 341, 371), will reopen the record in the above matter and hold further hearings commencing at 10:00 o'clock in the morning of November 13, 1950, in Room 5140, Federal Security Building, Independence Avenue and Fourth Street SW., Washington, D. C., for the purpose of taking additional evidence for use in the formulation of definitions and standards of identity for ice cream, frozen custard, sherbet, water ices, and related foods.

Pursuant to notices published in the FEDERAL REGISTER of November 1, 1941, and November 19, 1941 (6 F. R. 5574, 6 F. R. 5888), a hearing was held beginning January 5, 1942, and ending April 21, 1942, on proposals to adopt definitions and standards of identity for ice cream, frozen custard, sherbet, water ices, and related foods. A tentative order was not published because the War Food Administration had issued regulations restricting the use of some of the raw materials used in the preparation of the above-described foods. At the suggestion of the War Food Administration further action relative to the promulgation of definitions and standards of identity for these foods was deferred.

Because of the time that has elapsed since the evidence was received at the hearing which ended April 21, 1942, it is determined that the record in this matter should be reopened to afford interested parties an opportunity to present further evidence. For the purpose of avoiding the introduction of repetitious or unnecessary additional evidence and

to assist interested parties, in deciding what evidence they will offer, there are published herewith the proposals from the notice of November 1, 1941 (6 F. R. 5574), and also proposed findings of fact and proposed regulations suggested by the Food and Drug Administration on the basis of the evidence adduced at the hearing which ended April 21, 1942.

At the hearing commencing November 13, 1950, evidence will be limited to that which is material and relevant to the proposals herewith republished from the notice of November 1, 1941, or to the proposed findings of fact and proposed regulations suggested by the Food and Drug Administration. These proposals and suggested findings and regulations are as follows:

PROPOSALS IN NOTICE PUBLISHED NOVEMBER 1, 1941[1]

§ 20.1 *Ice cream; identity; label statement of optional ingredients.* (a) Ice cream is the food prepared with one of the optional dairy ingredients specified in paragraph (b) of this section, sweetened with one or more of the optional saccharine ingredients specified in paragraph (c) of this section. Subject to the conditions hereinafter prescribed, one or more of the optional ingredients indicated under subparagraphs (1) to (9), inclusive, of this paragraph and under paragraph (c) (5) to (8), inclusive, of this section is used:

(1) Ground spice, ground vanilla beans, infusion of coffee or tea, any natural food flavoring.

(2) Any artificial food flavoring.

(3) Chocolate or cocoa; but if any such ingredient is used no ingredient or combination of ingredients under subparagraphs (1) and (2) of this paragraph is used, directly or as a component of any other ingredient, which imitates the flavor of chocolate. For the purposes of this section the term "cocoa" means one or any combination of two or more of the following: cocoa, breakfast cocoa, defatted cocoa, the unpulverized residual material prepared by removing part of the fat from ground cacao nibs.

(4) Properly prepared mature fruit, or the juice of such fruit, in such quantity that the finished ice cream contains not less than 10 percent by weight of fruit or fruit juice or both, as the case may be; but if any such ingredient is used no ingredient or combination of ingredients under subparagraphs (1) and (2) of this paragraph is used, directly or as a component of any other ingredient (except as a component of artificially flavored maraschino-type cherries or of any confectionery which remains in pieces rather than being homogeneously distributed in the finished ice cream), which imitates the flavor of any fruit or fruit juice. The fruit used may be fresh, frozen, or canned, except that dried currants, dried figs, dried dates, dried prunes, and raisins may be used. The fruit juice used may be fresh, canned, or concentrated. The requirement of this section with respect to the weight of fruit or fruit juice means the weight of fruit or fruit juice, exclusive of the weight of any sweetening ingredient, water, or any other substance added for packing or canning, or otherwise added; and in the case of any fruit whose proper preparation requires the removal of pits, seeds, skins, cores, or other parts, the weight of such fruit after it is so prepared; and in the case of concentrated fruit juice, the original weight of the juice before it was concentrated; and in the case of dried fruit, the weight thereof multiplied by four.

(5) Properly prepared nuts, in such quantity that the finished ice cream contains not less than 6 percent by weight of nuts; but if any such ingredient is used no ingredient or combination of ingredients under subparagraphs (1) and (2) of this paragraph is used, directly or as a component of any other ingredient, which imitates the flavor of any nut.

(6) Malted milk.

(7) Confectionery. For the purposes of this section, the term "confectionery" means candy, cakes, cookies, or glaced fruits.

(8) Properly prepared cereal.

(9) Any distilled alcoholic beverage, including liqueurs, or any wine, or both; but if any such beverage or wine is used no ingredient or combination of ingredients under subparagraphs (1) and (2) of this paragraph is used, directly or as a component of any other ingredient, which imitates the flavor of any distilled alcoholic beverage or of any wine.

No ingredient or combination of ingredients under subparagraphs (1) and (2) of this paragraph, whether added as such or as a component of any other ingredient, is used which imitates the flavor of milk, cream, butter, or egg. Any artificial flavoring in any chocolate, cocoa, maraschino-type cherries, confectionery, distilled alcoholic beverages, or other ingredient used, is an optional ingredient of the finished ice cream. Coloring may be added. One or more of the optional ingredients indicated under subparagraphs (10) and (11) of this paragraph may be used.

(10) Liquid eggs, frozen eggs, dried eggs, egg yolks, frozen yolks, dried yolks; but the total weight of egg solids in any such ingredient used singly, or in any combination of two or more such ingredients used (including any egg white used, as authorized under subparagraph (11) of this paragraph), is less than _____ percent [to be fixed within the range of 1½ percent to 2 percent] of the weight of the finished ice cream.

(11) Gelatin, egg white, algin, locust bean gum, gum acacia, gum karaya, gum tragacanth, agar-agar; but the total weight of the solids of any such ingredient used, singly, or of any combination of two or more such ingredients used, is not more than 0.5 percent of the weight of the finished ice cream.

It may be seasoned with salt, and may be homogenized. It is frozen while being stirred.

The quantity of the optional dairy ingredient used, and its content of milk fat, are such that the weight of milk fat is not less than 12 percent of the weight of the finished ice cream; except that when one or more of the optional ingredients, other than malted milk, indicated in subparagraphs (3) to (9), inclusive, of this paragraph is used, the weight of milk fat is not less than 12 percent of the remainder obtained by subtracting the weight of such optional ingredients from the weight of the finished ice cream, but in no case is the weight of the milk fat less than 10 percent of the weight of the finished ice cream. The finished ice cream contains not less than 1.6 pounds of total solids to the gallon, and weighs not less than 4.5 pounds to the gallon.

(b) The optional dairy ingredients referred to in paragraph (a) of this section are cream, or cream and butter, or cream or butter or both combined with one or more of the following: milk, concentrated milk, evaporated milk, sweetened condensed milk, dried milk, skim milk, concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, dried skim milk, sweetened skim milk which has been concentrated and from which part of the lactose has been removed. Water may be added to each such dairy ingredient, and each is pasteurized. The term "milk" as used in this section means cow's milk.

(c) The optional saccharine ingredients referred to in paragraph (a) of this section are:

(1) Sugar.
(2) Dextrose.
(3) Invert sugar sirup.
(4) Corn sirup, dried corn sirup.
(5) Maple sirup, maple sugar.
(6) Honey.
(7) Brown sugar.
(8) Molasses.

When any of optional saccharine ingredients specified in subparagraphs (5) to (8), inclusive, of this paragraph is used, no ingredient or combination of ingredients under paragraph (a) (1) and (2) of this section is used, directly or as a component of any other ingredient, which imitates the flavor of such saccharine ingredient.

(d) (1) When any artificial flavoring is used, directly or as a component of any other ingredient, the label shall bear the statement "artificially flavored" or "artificial flavoring added" or "with added artificial flavoring," or in lieu thereof, in case the artificial flavoring is a component of another ingredient, "_____ artificially flavored," the blank being filled in with the name of such other ingredient.

(2) Wherever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, such statement shall immediately and conspicuously precede or follow such name, without intervening written, printed, or other graphic matter, except that a word or words indicating the kind of the ice cream may so intervene.

§ 20.2 *Frozen custard, french ice cream, french custard ice cream; identity; label statement of optional ingredients.* Frozen custard, french ice cream, french custard ice cream conforms to the definition and standard of identity, and is subject to the requirements for label statement of optional ingredients, prescribed for ice cream by § 20.1, except that one or more of the optional egg ingredients permitted by

[1] Section numbers changed to conform with proposed order. Certain minor editorial corrections also made.

paragraph (a) (10) of § 20.1 are used, in such quantity that the total weight of egg solids therein is _____ percent (to be fixed within the range of 1½ percent to 2 percent) or more of the weight of the finished frozen custard.

§ 20.3 *Sherbet; identity.* (a) Sherbet is the food prepared with one or more of the optional fruit ingredients specified in paragraph (b) of this section, an optional dairy ingredient specified in paragraph (c) of this section, sweetened with one or more of the optional saccharine ingredients sugar, dextrose, invert sugar sirup, corn sirup, and dried corn sirup. One or more of the optional ingredients indicated in subparagraphs (1) and (2) of this paragraph may be used:

(1) Liquid eggs, frozen eggs, dried eggs, egg yolks, frozen yolks, dried yolks.

(2) Gelatin, egg white, algin, locust bean gum, gum acacia, gum karaya, gum tragacanth, agar-agar, pectin; but the total weight of the solids of any such ingredient used singly, or of any combination of two or more such ingredients used, is not more than 0.5 percent of the weight of the finished sherbet.

It may be seasoned with salt, and may be homogenized. It is frozen while being stirred. The weight of the optional fruit ingredient or mixture of fruit ingredients used is not less than _____ percent [to be fixed within the range of 10 percent to 20 percent] of the weight of the finished sherbet. The quantity of the optional dairy ingredient used, and its content of milk fat and total milk constituent solids, are such that the finished sherbet contains not less than 2 percent by weight of milk fat, but less than 8 percent by weight of total milk constituent solids. The finished sherbet weighs not less than 6 pounds to the gallon.

(b) The optional fruit ingredients referred to in paragraph (a) of this section are:

(1) Any fresh, canned, or concentrated juice or mixture of juices of mature fruit.

(2) Any mature, properly prepared fruit or mixture of fruits, which may be fresh, frozen, or canned, and which is screened or crushed.

The requirement of this section with respect to the weight of fruit ingredients means the weight of fruit or fruit juice exclusive of the weight of any sweetening ingredient, water, or other substance added for packing or canning, or otherwise added; and in the case of any fruit whose proper preparation requires the removal of pits, seeds, skins, cores, or other parts, the weight of such fruit after it is so prepared; and in the case of concentrated fruit juice, the original weight of the juice before it was concentrated.

(c) The optional dairy ingredients referred to in paragraph (a) of this section are cream, milk, concentrated milk, evaporated milk, sweetened condensed milk, or dried milk, or any combination of two or more of these, or any combination of one or more of these with butter, or any combination of one or more of these or of butter with one or more of the following: skim milk, concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, dried skim milk. Water may be added to each such dairy ingredient, and each is pasteurized. The term "milk" as used in this section means cow's milk.

§ 20.4 *Water ices; identity.* (a) Water ices are the foods each of which is prepared from one or more of the optional fruit ingredients specified in paragraph (b) of this section, with or without added water, sweetened with one or more of the optional saccharine ingredients sugar, dextrose, invert sugar sirup, corn sirup, and dried corn sirup. One or more of the following optional ingredients may be used: gelatin, egg white, algin, locust bean gum, gum acacia, gum karaya, gum tragacanth, agar-agar, pectin; but the total weight of the solids of any such ingredient used singly, or of any combination of two or more such ingredients used, is not more than 0.5 percent of the weight of the finished water ice. It is frozen while being stirred. The weight of the optional fruit ingredients or mixture of fruit ingredients used is not less than _____ percent (to be fixed within the range of 10 percent to 20 percent) of the weight of the finished water ice. The finished water ice weighs not less than 6 pounds to the gallon.

(b) The optional fruit ingredients referred to in paragraph (a) of this section are:

(1) Any fresh, canned, or concentrated juice or mixture of juices of mature fruit.

(2) Any mature, properly prepared fruit or mixture of fruits, which may be fresh, frozen, or canned, and which is screened or crushed.

The requirement of this section in respect to the weight of fruit ingredients means the weight of fruit or fruit juice, exclusive of the weight of any sweetening ingredient, water, or other substance added for packing or canning, or otherwise added; and in the case of any fruit whose proper preparation requires the removal of pits, seeds, skins, cores, or other parts, the weight of such fruit after it is so prepared; and in the case of concentrated fruit juice, the weight of the original juice before it was concentrated.

(c) The name of each such water ice is "_____ ice," the blank being filled in with the common name of the fruit or fruits from which the fruit ingredient or fruit ingredients used are obtained. When two or more fruit names are filled in, such names are in the order of predominance, if any, by weight of the respective fruit ingredients used.

PROPOSED FINDINGS AND REGULATIONS BASED ON EVIDENCE TAKEN AT HEARING OF JANUARY 5, 1942–APRIL 21, 1942, SUGGESTED BY FOOD AND DRUG ADMINISTRATION

Findings of fact.[1] 1. Ice cream is the common and usual name of the frozen product made from cream or a mixture of milk and cream (or a combination of dairy products of equivalent composition), sweetened with sugar or other suitable sweetening agent, and containing natural or imitation flavorings or other food ingredients, such as cocoa, fruit, and nuts, to characterize it as a kind of ice cream. It is sometimes seasoned with salt. Gelatin, or other products having similar properties (known in the industry as stabilizers), are usually added. Other ingredients hereinafter noted are sometimes added. (R. 42–46, 82, 231–232, 397, 430, 528–529, 688, 800, 4834)

2. Ice cream is made to some extent in the home. The usual household practice is to prepare it from sweet cream or a mixture of sweet milk and sweet cream. However, a large proportion of commercially produced ice cream is prepared from various dairy products, with or without water, so combined that the composition closely resembles that of cream or a mixture of milk and cream (see finding 3). When prepared for freezing, the sweetened dairy ingredient (with other ingredients used and with or without the addition of flavoring or other characterizing ingredient) is known in the trade as ice cream mix. Certain characterizing ingredients such as fruit may be, and frequently are, added after the mix is frozen. (R. 230–233, 402, 671–672, 699, 1049, 2252, 5236)

3. Milk and cream are composed of certain proportions of water, milk fat, and other constituents commonly referred to as nonfat milk solids or serum solids. The nonfat milk solids include proteins, milk sugar, various minerals, and certain water-soluble vitamins. The dairy products other than milk and cream referred to in finding 2 which are used and are suitable for use in making commercial ice cream contain milk fat or nonfat milk solids or both in varying proportions, and may also contain added sweetening agents. Such dairy products are concentrated milk, evaporated milk, sweetened condensed milk, dried milk, skim milk, concentrated (evaporated or condensed) skim milk, superheated condensed skim milk, sweetened condensed skim milk, dried skim milk, liquid or condensed or dried sweet cream buttermilk (see finding 4), and butter. Combinations of two or more of these products are used. Water is added if necessary. To produce the properties associated by consumers with ice cream the proportions of the various products used in such combinations are so adjusted that the finished ice cream mix contains substantial amounts of both milk fat and nonfat milk solids. In recent years the proportion of nonfat milk solids to milk fat in ice cream has been generally increased, as compared with the proportion naturally present in cream or mixtures of cream and milk previously used as the dairy ingredient. The most important and expensive single constituent of ice cream, however, is milk fat, and ice cream cannot be made without a substantial proportion of this constituent. There is no evidence that any milk or milk product other than cow's milk or cow's milk products

[1] The citations following each finding of fact refer to the pages of the transcript of the testimony and the exhibits received in evidence at the hearing, which are the basis for these findings.

is used in making ice cream. (R. 44, 46, 50, 402, 440, 532–533, 564, 696–697, 721–728, 732, 786, 1101, 4422, 5204, 5482–5491)

4. Sweet cream buttermilk, in liquid or condensed or dried form, has substantially the same composition as the corresponding form of skim milk. Careful selection and handling of the product sold as sweet cream buttermilk are necessary to avoid some degree of souring. To be suitable for use in ice cream, the product is made from cream which is churned when it is fresh and sweet. No starter or neutralizer is used, and the resulting buttermilk is promptly used or is promptly evaporated or dried while it is still sweet. Such buttermilk, or the concentrated or dried product mixed with water to a total solids content of 8.5 percent, has a titratable acidity of not more than 0.17 percent, calculated as lactic acid, and a bacterial count (microscopic cluster count) of not more than one million per cubic centimeter. (R. 276–277, 406, 626–628, 660–661, 989–994, 1513–1514, 1517–1519, 1520–1530, 1532–1535, 1539–1546, 1548–1555, 1562–1563, 1570–1585, 1592–1606, 1607–1615, 1620–1622, 3064, 5469–5473, 5512–5527)

5. The tendency in recent years to use increasing amounts of nonfat milk solids in ice cream (see finding 3) has had the effect of improving the texture and, when the fat content is held at the same level, of enhancing the nutritional value of the ice cream. Lactose (milk sugar), constitutes about half or slightly more of the nonfat milk solids. It has a limited solubility in cold water, and when the nonfat milk solids of ice cream are raised to about 12 percent or above, the lactose tends to crystallize while the ice cream is in storage. These crystals impart an undesirable grittiness which is known in the trade as sandiness. In order to incorporate larger amounts of nonfat milk constituents without danger of sandiness, various products derived wholly or in part from milk have been used. One of these is prepared by concentrating in vacuo sweetened skim milk to a point where part of the lactose crystallizes; the crystals are then removed by centrifuging. The resulting product differs from sweetened condensed skim milk only in that it has a lower lactose content. (R. 491–499, 668, 681–684, 906, 1819, 1844)

6. Other products represented as suitable for increasing the nonfat milk solids without danger of sandiness are prepared by the following basic procedure: The casein of skim milk is coagulated by the action of an acid, usually hydrochloric. The coagulated casein is separated from the other solids of the skim milk and is then treated with a solution of soda or other alkali to restore the casein to something like its natural condition. The resulting product is usually dried. It consists mostly of casein or a compound of casein and the alkali used; large parts of the vitamins and minerals of the skim milk from which it is prepared are lost. (R. 686–687, 927–932, 1640–1641, 2200)

7. A product similar to those described in finding 6, which is sold for a similar purpose, is prepared by separating casein from skim milk by the addition of a gum. Usually calcium chloride is also added. The precipitated mass is collected and dried. The final product contains casein, gum, some calcium chloride if this is used, and a part of the soluble constituents of the skim milk. The method of preparing this product also results in a very considerable loss of the vitamins and minerals of the original skim milk. (R. 685–686, 728–729, 916, 1627–1650, 2200)

8. There was considerable testimony about a product sold under the trade name of Sanalac. It was first said to be made by treating skim milk with an alkali to a point where some change occurs in the lactose, the mixture then being neutralized with an acid, concentrated, and dried. Further testimony indicated that this method is not now used but that the skim milk is treated in some other way. The evidence on the composition of this product is contradictory, and the record contains no substantial basis upon which its suitability for use in ice cream can be determined. (R. 729, 1428–1505, 1661–1675, 1677–1694, 2719–2720, 2729–2731, 5462–5464)

9. Ice cream is basically and essentially a milk and cream product. The products described in findings 6 and 7, although derived in part from milk, are so changed that they have lost the characteristics of milk and cream, including a large proportion of the water-soluble vitamins and minerals. Such products contribute to the ice cream in which they are used a certain smoothness of texture ordinarily associated with the milk fat and nonfat milk solids content of ice cream. (R. 729–730, 1631, 2199, 3240, 3825)

10. The sweetening agent most commonly used in ice cream is sugar (sucrose). Other products, however, are used which impart sweetness, and are suitable for such use. These are dextrose or corn sugar, invert sugar in the form of paste or sirup, corn sirup, or dried corn sirup. These may be used singly or in combination with each other and with sugar. Additional products which serve the dual purpose of sweetening the ice cream and imparting to it their own characteristic taste and flavor are specified in finding 19. (R. 44–45, 407–409, 537, 693, 733, 831, 1126, 1705–1715, 1784–1787, 1799–1803, 1814–1820, 1835–1838, 1845–1846, 1853–1859, 1862, 1882–1917, 1918–1937, 1939–1953)

11. Ground spices, ground vanilla beans, infusions of coffee or tea, and a large variety of natural food flavorings, such as extracts of lemon and vanilla, are used as characterizing flavors of ice cream and are suitable for such use. (R. 54–55, 237, 248, 409, 544, 1152, 3032; OPEx. 3)

12. Various artificial food flavorings are also widely used to modify or characterize the flavor of ice cream. They may be added as such or as components of other ingredients. When so used that they do not create a misleading impression as to the presence of a natural ingredient or the amount of a natural ingredient present, artificial food flavorings are suitable ingredients of ice cream. Consumers quite generally prefer natural over artificial flavorings and desire to know when artificial flavorings are present in ice cream. To the extent that information can be conveyed to consumers by labeling on ice cream, label statements of the use of artificial flavorings are in the consumer's interest. Such label statements which are accurate, informative, and reasonable are "artificially flavored," "artificial flavoring added," "with added artificial flavoring," or if the artificial flavoring is not added as such but as a component of some other ingredient, the statement "_____ artificially flavored," the blank being filled in with the name of such other ingredient. (R. 85–86, 416, 426–429, 1248, 1382–1384, 1391–1394, 1401–1402, 1963–1965, 1982, 1997, 2011–2012, 2903, 5095–5099, 5254)

13. The kind of ice cream now produced in greatest quantity is characterized, wholly or substantially, by the flavor of vanilla beans or by the alcoholic extract of such beans. Frequently this flavor is fortified with synthetic vanillin. Vanillin is naturally present in cured vanilla beans but is responsible for only a part of the flavor of such beans and their alcoholic extract. It was proposed that when synthetic vanillin is used in ice cream the label declare its presence simply as vanillin, and that no reference be made to the fact that it is an artificial flavoring. A label declaration in such terms would not reveal to consumers the artificial character of the flavoring, and would tend to be deceptive. R. 54–55, 237, 526, 538–540, 1394, 1935, 4452–4480, 4511–4518, 4525, 4611, 4624–4627, 4655–4658, 4731–4739, 4759, 4769, 4912–4913, 4940–4966, 4968–4973, 4974–4983, 5094–5095; OPEx.3)

14. Chocolate or various kinds of cocoas, or the unpulverized residual material prepared by removing part of the fat from ground cacao beans, or mixtures of any two or more of these substances are used as characterizing ingredients of a kind of ice cream. These cacao ingredients may be added to the ice cream mix as the dry substances or as suspensions in sirup. When added as the dry substances they may cause undue thickening of the mix during pasteurization, which results in difficulties in subsequent steps of manufacture. This may be prevented by the use of a small quantity of disodium phosphate. The quantity necessary and suitable for this purpose is not more than 0.2 percent by weight of the ice cream. (R. 56, 87, 238, 414–415, 546, 648, 692–693, 790–791, 1790, 1807–1808, 3072, 3076, 3102)

15. When fruits are used to characterize ice cream it is customary to use the fresh fruits, when they are available. However, frozen and canned fruits are also extensively used and are suitable for such use. Dried fruits are sometimes used and are likewise suitable. Fruit juices, alone or in combination with fruits, are also suitable for use in ice cream. The fruit juice used may be fresh, canned, frozen, or concentrated. (R. 57, 238–240, 529, 1104, 1167–1168, 1278–1282)

16. To be suitable for use in ice cream, fruits should be mature and properly prepared by removal of pits, seeds, skins, and cores, where such removal is the usual procedure in preparing such fruit for consumption as fresh fruit. In the case of citrus fruit, however, the whole

fruit, except seeds, is often used in order to obtain the flavoring value of the peel. Fruits are often sweetened before addition to ice cream, and for some types of ice cream (ripple, variegated, marbleized) the fruit and sugar mixture is thickened with pectin. Sometimes fruits are acidulated before use. Acids suitable for the acidulation of such fruits are citric, tartaric, malic, and lactic acids. (R. 57, 194–196, 415, 469, 543, 788, 1059, 1145, 1276–1284, 1364, 1957, 1966, 1973–1974, 2001, 2006, 2023, 2417, 2422–2425, 2460–2461, 2469–2472, 2490, 2503–2504, 3031, 3083–3084 4265–4266, 4296, 4359–4360, 4393–4397)

17. Substantial quantities of fruit must be added to ice cream to import the definite fruit characteristics expected by consumers in a fruit type of ice cream. However, the evidence is insufficient to establish numerical minima for the content of the various fruits used. (R. 58, 86, 188–192, 252–265, 269–271, 417–421, 1050–1059, 1091, 1097, 1105–1109, 1111–1113, 1128, 1144, 1147, 1152, 1161–1162, 1282–1283, 1284–1286, 1304, 1330, 1365–1366, 1377, 1959–1960, 1973; OPEx. 5; Govt. Exs. 8, 9, 10)

18. Properly prepared nuts are frequently used to characterize ice cream. The nuts used are sometimes roasted or cooked in butter, and are sometimes preserved in a sirup. Substantial quantities of nuts must be added to ice cream to impart the definite characteristics expected by consumers in a nut type of ice cream. However, the record does not contain sufficient evidence to establish numerical minima for the content of the various nuts used. (R. 58–59, 86, 197, 241–242, 254–265, 271, 422–424, 545, 1060–1063, 1110, 1151, 1153, 1231–1232, 1288–1289, 1365, 1961–1963, 1978–1979, 1981, 2005, 2900, 2973–2974, 2994, 5095–5099; Govt. Exs. 8, 9, 10; OPEx. 5)

19. Maple sirup, maple sugar, honey, brown sugar, malt sirup, dried malt extract, and molasses (other than blackstrap) are frequently used to characterize ice cream, in addition to contributing sweetness, and are suitable for such use. (R. 43, 243, 408, 693, 1714, 1730, 1733, 1948–1951)

20. Malted milk is used and is suitable for use as a characterizing ingredient of ice cream. Although malted milk contains substantial quantities of milk solids, its use by ice cream manufacturers is solely as a characterizing ingredient and not as a source of milk fat or nonfat milk solids. (R. 694, 801–802, 936–938, 1653–1657)

21. Candy, cakes, cookies, cooked cereals, and glacéed fruits also are used to characterize ice cream and are suitable for such use. (R. 57, 59, 244–247, 424–425, 4826–4828)

22. Wines and distilled alcoholic beverages, including liqueurs, are used to characterize ice cream and are suitable for such use. (R. 59, 425–426, 1153, 1338–1343)

23. Eggs or egg yolks (liquid, frozen, or dried) are often used in small quantities in ice cream, both in the home and in commercial plants. Their use commercially is mainly to facilitate the whipping or incorporation of air into the ice cream. When eggs or egg yolks are used in sufficient quantity they impart their color and flavor and create a frozen product different from ice cream which is known as frozen custard (see finding 40). The quantity of eggs or egg yolk used in ice cream is such that the egg yolk solids in the finished ice cream is less than 1.4 percent by weight. (R. 65–68, 82, 87, 234, 397, 431–437, 691–692, 741–742, 932–936, 997–998, 4834–4835)

24. The following substances are used as stabilizers in ice cream, to retard the formation of large ice crystals and in some cases to improve the whipping quality of the mix, and are suitable for such use: gelatin, with or without admixture of mono- or diglycerides, or both, of fat-forming fatty acids; algin (sodium alginate); extract of Irish moss; psyllium seed husk; agar-agar; gum acacia; gum karaya; locust bean gum; gum tragacanth. Dextrin is often used as a carrier for such stabilizing substances. The quantity of such substances needed is not more than 0.5 percent by weight of the finished ice cream. Larger quantities are unnecessary and may result in undesirable effects. There is no evidence establishing the use or suitability of egg white or quince seed as stabilizers. (R. 45, 90, 437–439, 549–551, 691, 733–741, 805–806, 824–830, 1860, 2031–2038, 2040–2047, 2067–2073, 2079–2119, 2124–2158, 2190–2192, 2202, 2208–2223, 2248–2259, 2271–2276, 2336–2339, 2374–2382, 2468, 2485–2486, 2515, 2537, 2558, 2691–2717, 2735–2753, 4913)

25. The evidence does not establish that lecithin is used to any substantial extent in ice cream, that it is effective as a stabilizer in ice cream, or that it has any legitimate place in the product. (R. 2564–2614, 2617–2626, 2630–2643, 2656–2658, 2662–2684)

26. Oat flour was proposed for use in ice cream as a stabilizer and antioxident. The evidence does not establish its suitability for use as a stabilizer or that it has been used as such to any substantial extent. The evidence does not establish that there is any need for an antioxident in ice cream. (R. 53, 2761–2771, 2773–2793, 2802–2824, 2832–2873, 3053, 3203, 4888–4899)

27. Ice cream has customarily been made from dairy ingredients that are not sour. From their general knowledge of the composition of ice cream, derived in part from its home preparation, consumers do not expect the milk, cream, or other dairy product used in place of these, to be sour or to have been prepared from sour materials. Some ice cream manufacturers have added to the dairy ingredients baking soda and other alkalis, such as calcium hydroxide, magnesium hydroxide, and magnesium carbonate, to neutralize the acidity resulting from the souring of milk and cream. An ice cream mix which is prepared with sour dairy ingredients is likely to cause difficulty such as thickening and curdling during pasteurization, homogenization, or freezing, unless the acidity of the mix has been neutralized by an alkali. It was proposed that the alkalis sodium bicarbonate, magnesium oxide, magnesium carbonate, calcium oxide, calcium hydroxide, and calcium sucrate be recognized as optional ingredients of ice cream. It was claimed that the use of such alkalis is necessary to permit the use of milk and cream that have developed acidity while being held for use or during shipment from distant points; that neutralization would not result in abuses since consumers would refuse ice cream having the objectionable flavor accompanying souring; and that in any event the practice could be controlled by setting a limit on the amount of acidity that could be so neutralized. Some manufacturers use neutralizing agents to reduce the slight acidity naturally present in ice cream mix even where no souring has occurred, sometimes with the idea of manipulating the flavoring or whipping quality and sometimes upon the theories, which have not been established, that reduced acidity permits the use of larger quantities of nonfat milk solids without danger of sandiness and improves the viscosity of certain mixes. Recognition of such alkaline substances as optional ingredients of ice cream would encourage the use of sour milk products which are not normal or acceptable ingredients of ice cream, would hinder the work of agencies which long and successfully have been attempting to improve the sanitary quality of dairy products used in ice cream, and may result in the concealment of the presence of such unfit milk products. (R. 51–52, 404, 525, 571, 624, 701, 704, 792, 809–811, 945–954, 975, 978, 1010, 1179, 1245, 1260, 1790, 1807–1808, 1867–1870, 2164, 2264, 2279–2286, 2308–2323, 2487, 2522, 2882–2897, 2965–2968, 3004–3006, 3012–3018, 3022, 3054–3058, 3071, 3189–3192, 3297–3300, 3317, 3371, 3374, 3570, 3637–3640, 4016, 4495–4497, 4504, 4847, 4912, 5136–5140, 5181, 5239–5242, 5280, 5302–5303, 5336–5339, 5417–5462, 5492, 5501–5505; Govt. Exs. 18, 19, 20, 21, 22, 23, 24, 37)

28. Occasionally batches of ice cream have the appearance of being "wet" or not fully frozen. Sometimes there is a partial separation of the casein in curdlike particles. Sometimes there is difficulty in cooling the mix after pasteurization and homogenization, due to its becoming too thick to flow freely; this is often caused by the clumping together of particles of fat. Occasionally, different batches of ice cream prepared by the same formula show differences in apparent smoothness and richness. These difficulties often arise from the improper adjustment of certain mechanical equipment used in preparing the mix or freezing the ice cream. Most, if not all, of the difficulties will occur if dairy ingredients are used in which souring has progressed to some degree, and in such cases the use of small quantities of the alkalis referred to in finding 27 will correct the trouble, but such use is subject to the objection expressed in that finding. Some persons advance the theory that these difficulties may also arise occasionally when the mechanical equipment is in proper adjustment and the dairy ingredients used are sweet. In such circumstances these persons ascribe the difficulties to a condition of the mineral salts naturally present in milk, which condition they call lack of salt balance. They describe this as an abnormal relationship in the relative proportions of calcium and magnesium ions on the one hand to phosphate and citrate ions on the other. To cor-

rect a deficiency in calcium or magnesium ions these persons recommend the use of calcium chloride or calcium lactate, and for a deficiency in phosphate or citrate ions they recommend the use of sodium citrate, disodium phosphate, or sodium metaphosphate. The use of such salts, except disodium phosphate in a mix characterized by cacao ingredients, has been quite limited. When adequate precautions are adopted to eliminate dairy products in which incipient souring has occurred there is no established need for the use of either alkalis or salts. The evidence does not establish that lack of salt balance is the causative factor in the difficulties listed above or that the addition of the mineral salts serves any legitimate purpose except in the case of ice cream characterized by cacao ingredients. (R. 624, 709–711, 748–763, 769–770, 809–822, 846–858, 869–874, 921–926, 960–977, 998–1000, 1790, 1876–1881, 2172, 2289–2296, 2499, 2520–2523, 3113–3150, 3152–3160, 3162–3170, 3205–3233, 5135, 5260–5267, 5332–5336, 5418, 5421, 5432)

29. Several products made by adding alkalis to skim milk, concentrating the mixture and drying it to a powder, are sold under trade names to ice cream manufacturers with representations that by the use of such products the nonfat milk solids can be increased without danger of sandiness. There was testimony concerning a mixture of an alkali-treated dried skim milk and dried egg yolk, largely to the effect that its egg yolk content causes a change in texture and permits a high overrun. Another such product is prepared by adding calcium and magnesium hydroxide and disodium phosphate to skim milk and drying, although theories advanced by witnesses concerning the use of such substances as salt-balancing agents (see finding 28) indicate that the effect from calcium and magnesium is offset by the phosphate. The use of such alkalis neutralizes the natural acidity of the skim milk. Whether or not such neutralized dried skim milk retards the crystallization of lactose in ice cream is not established by the evidence. To the extent that these products may be overneutralized and serve as vehicles for the introduction of alkalis into ice cream, their use is subject to the same objection as the direct addition of such alkalis (see finding 27). When they are not overneutralized their incorporation in any substantial proportion in the ice cream mix dilutes the acidity of the mix and makes possible the use of larger quantities of dairy ingredients in which souring has occurred. The evidence does not establish that such products have a legitimate place in ice cream. (R. 44, 730, 3238–3280, 3557–3570, 3605–3616; Govt. Exs. 20, 24, 37)

30. Carotene (provitamin A) was proposed by a manufacturer of this substance as an optional ingredient of ice cream for the purpose of enhancing its nutritive value. The evidence does not establish that carotene is stable and retains its potency in ice cream. Ice cream is consumed in relatively small quantities, particularly by those groups whose diet is likely to be deficient in vitamin A. It is not shown that, even if carotene retains its potency in ice cream, the quantity of vitamin A it would contribute to such diets would be of any substantial significance. It was also not shown that carotene would otherwise serve a useful purpose in ice cream or that it has been used in ice cream to any substantial extent. To avoid confusing and misleading consumers, the fortification of foods with vitamins should be restricted to a few staple foods which are effective carriers of the particular vitamins that are deficient in the diet of a significant segment of the population who regularly consume these foods. The quantities of carotene suggested for addition to ice cream would be of no substantial nutritional significance and would tend to mislead consumers. (R. 3850–3868, 3871–3897, 4992–5012, 5041–5046; OP Ex. 100)

31. Many kinds of ice cream are colored. When so used that they do not create a misleading impression as to the presence of a natural ingredient or the amount of a natural ingredient present, colorings are suitable ingredients of ice cream. (R. 53–54, 86, 547–548, 614, 776–778, 1021, 1102–1103, 1119–1126, 1143–1144, 1148, 1183, 1344, 1958, 1970, 1975, 1993–1995, 2507, 3025, 4361, 4835, 4845)

32. To obtain uniformity of distribution of the components of ice cream mix and to disperse the fat particles so as to produce a better texture in the finished product, it is customary to heat the ice cream mix to a temperature of about 145° Fahrenheit or above while the mix is being stirred and then to run it through a homogenizer. (R. 43, 530, 745–747)

33. The heating prior to homogenization is normally such that it pasteurizes the mix. Pasteurization eliminates danger of milk-borne diseases and increases the keeping quality of ice cream. Pasteurization is generally recognized as an essential step in the preparation of commercial ice cream, and consumers expect the protection from milk-borne diseases afforded by pasteurization. (R. 397, 534, 745)

34. Each State and the District of Columbia have established through law or regulation minima for the fat content of ice cream. In the case of plain ice cream, that is, ice cream in which the characterizing ingredients are not bulky, the minimum requirements are as follows:

MILK FAT

8 percent (5)	10 percent (23)	12 percent (13)	13 percent (1)	14 percent (7)
District of Columbia.	Alabama.	Colorado.	Wisconsin.	Idaho.
Missouri.	Arizona.	Delaware		Maine.
Rhode Island.	Arkansas.	Illinois		Nebraska.
Texas.	California.	Iowa		Nevada.
West Virginia.	Connecticut.	Maryland.		New Hampshire.
	Florida.	Michigan.		Oklahoma.
	Georgia.	Minnesota.		Vermont.
	Indiana	New Mexico.		
	Kansas.	North Dakota.		
	Kentucky.	Oregon.		
	Louisiana.	South Dakota.		
	Massachusetts.	Utah.		
	Mississippi.	Wyoming.		
	Montana.			
	New Jersey.			
	New York.			
	North Carolina.			
	Ohio.			
	Pennsylvania.			
	South Carolina.			
	Tennessee.			
	Virginia.			
	Washington.			

(R. Govt. Ex. 4)

35. The characteristic smoothness and texture and the characteristic richness in taste and food values expected in ice cream by consumers are produced primarily by the content of milk fat, nonfat milk solids, and other solids in the mix, by the homogenization of the mix, and by the technique of freezing. Of all these factors, the quantity of milk fat has the greatest influence on such characteristics. A reasonable minimum limit for milk fat in ice cream is 12 percent by weight. (R. 23–25, 27, 46, 50, 83–84, 440–443, 478–479, 564, 678–679, 1022–1025, 1101, 1158–1159, 1236–1244, 1259, 1263, 1834, 1865, 2230–2231, 2240, 2489, 2908–2912, 2981–2982, 3175–3184, 3321–3323, 3349–3350, 3364, 4422, 4433–4447, 4487–4494, 4498–4500, 4836, 4914, 5133, 5482–5491; Govt. Exs. 3, 5, 28–34; OPEx. 224)

36. The characterizing ingredients specified in findings 14, 15, 18, 20, and 21, are bulky, that is, they must be used in relatively large quantities in order to characterize ice cream. When such quantities are added to an ice cream mix, the fat content of the finished ice cream will be lowered in proportion to the quantity of such characterizing ingredients used. This is recognized in practically all State standards. A considerable number of States permit a reduction in fat content proportionate to the quantity of such characterizing ingredients, but provide that in no case shall the reduction be more than 2 percent. Many States provide for a flat reduction of 2 percent. Most State standards limit the reduction to not more than 2 percent below the minimum prescribed for ice cream characterized by non-bulky ingredients. The characterizing ingredients specified in findings 11, 12, and 22 are used in relatively small quantities and do not significantly lower the fat content of the mix. The characterizing and sweetening ingredients specified in finding 19 replace other sweetening agents and do not lower the fat content of the mix. (See page references under findings 11, 12, 14, 15, 18, 19,

20, 21, and 22; also R. 440A, 786–788, 524–525, 566–568, 3399–3404; Govt. Ex. 4)

37. Although there was no evidence of the use of insufficient nonfat milk solids in ice cream, attention was called to the possibility that abuses in this respect might arise unless a minimum nonfat milk solids content is required. When the fat content is low (8 percent to 10 percent), it is customary to use 10 percent to 12 percent of nonfat milk solids. In high-fat ice cream the content of nonfat milk solids is lower, but even in the case of very high-fat ice cream it does not fall below about 6 percent. A minimum of 6 percent by weight of nonfat milk solids in ice cream is a reasonable limitation. (R. 50, 681, 1717–1722, 1725–1726, 1745, 1753–1756, 1766–1767, 1771–1773, 1804–1805, 1824; OPEx. 15)

38. When ice cream mix is frozen, air is whipped in and the volume of finished ice cream is greater than the volume of the original mix. This increase in volume is known in the trade as "overrun." The amount of overrun depends mainly on the vigor of whipping, the temperature of freezing, and the composition of the mix. A certain amount of overrun is necessary to give ice cream some of its characteristic properties, but ice cream can be excessively inflated and thus cheapened, since it is sold by volume. As the amount of air is increased the weight of a given volume of the ice cream decreases. It is practicable in manufacturing ice cream to control the quantity of overrun with either of the two types of freezers in general use, that is, the batch type and the continuous type. Most of the State standards limit the overrun either by establishing a minimum weight per gallon for the finished ice cream or by other provisions. An overrun of more than approximately 100 percent is excessive. A requirement that the weight of ice cream be not less than 4.5 pounds per gallon, coupled with a minimum limit on solids per gallon (see finding 39), permits an overrun of about 100 percent, is effective in preventing the excessive incorporation of air, and is reasonable. (R. 60–62, 85, 443b–443c, 448–449, 765–768, 771–776, 2229, 4914; Govt. Ex. 4)

39. Excessive water in ice cream mix dilutes its solids content and cheapens the product. A reasonable limitation against excessive dilution is a requirement that the solids content be not less than 1.6 pounds per gallon of finished ice cream. Such a requirement also serves as a desirable adjunct to the method of controlling overrun referred to in finding 38, since it allows higher overrun in the case of higher solids content and restricts overrun in the case of lower solids content (R. 29, 60–61, 448, 525; Govt. Ex. 4)

40. Frozen custard, french ice cream, and french custard ice cream are common and usual names for the food which is identical with ice cream except that it contains eggs or egg yolk in such quantity that the egg yolk solids are not less than 1.4 percent of the weight of the finished food. Findings 1 to 39 on ice cream, except that part of finding 1 on the name "ice cream" and that part of finding 23 limiting the egg yolk solids content of ice cream, are applicable to frozen custard. (See page references under finding 23; also R. 523–524, 569; Govt. Ex. 4)

41. A frozen product which closely resembles ice cream but which usually contains only about 4 or 5 percent of milk fat is sold in several States. Proposals were advanced that a definition and standard of identity be prescribed for this product under the name "ice milk." In comparison with the volume of ice cream, the quantity of ice milk sold is small; its production in 1938 was less than 3.5 percent of that of ice cream. Fourteen States define the product as imitation ice cream, and ten of these prohibit its sale; twelve States define ice milk and prescribe restrictions designed to safeguard against its sale as ice cream. Among such safeguards are: Sale is permitted only in packages conspicuously labeled ice milk; the size of the packages is limited to not more than 1 pint or other relatively small quantity; sale is restricted to establishments which sell no other frozen desserts; establishments selling the product are required to display signs in letters of specified height bearing such inscriptions as "Ice milk sold here." A large proportion of this product is used in certain soda fountain beverages. Consumers do not generally distinguish ice milk from ice cream. It is easily passed off as and for ice cream, and sometimes is so passed off. (R. 22, 68, 75–76, 89, 551, 2508–2511, 2513–2514, 2983–2988, 3000, 3037–3039, 3086–3096, 3325–3338, 3531–3556, 3576–3588, 3700–3704, 3722–3725, 3775–3786, 3791, 3835–3836, 3900–3904, 3908–3923, 3925–3954, 3955–3969, 3970–3993, 4000–4005, 4007–4012, 4020–4044, 4059–4067, 4074–4111, 4139–4140, 5141–5145, 5245–5248, 5252, 5287–5297, 5328, 5341–5350, 5473–5482; Govt. Ex. 15, 26, 27; OP Ex. 98, 99, 101, 102, 105)

42. Sherbet is a frozen food having a number of characteristics that distinguish it from ice cream. The most outstanding characteristics of ice cream, even of the fruit types, are the smoothness, texture, and richness in taste and food values arising from a relatively high content of milk fat and nonfat milk solids (see findings 5 and 35), whereas the principal characteristic of most sherbet arises from its content of fruit or fruit juice. Sherbet contains milk constituent solids, but in quantities much less than does ice cream, and these solids usually serve to impart no more than a slightly milky (not creamy) taste. (R. 21–22, 69–70, 88, 398, 410, 443B, 530, 2504–2506, 4211, 4278–4279, 4834, 4914–4915, 5146–5147, 5249)

43. Other significant differences between ice cream and sherbet are: Sherbet has a tarter taste, due to its fruit content or to added acid or both; it is usually somewhat sweeter than ice cream, lower in total solids, and of somewhat coarser texture. (R. 22, 69–70, 203, 209, 398, 530, 1961, 2524, 4186, 4196, 4212, 4223–4224, 4291–4292, 4834)

44. Small quantities of frozen foods are sold as sherbet which contain no fruit or fruit juice but are characterized by mint, wine, chocolate, vanilla, tea, coffee, spices, ginger ale, or pistachio. Some of these are not acidulated and do not have the characteristic tartness of sherbet. Such products can be made to resemble ice cream, and to the extent that they are so made they tend toward deception of consumers (cf. finding 41). The name "sherbet" so generally implies a frozen food of fruity characteristics that it may be a misnomer for a non-fruity food. However, there is no evidence that when the word "sherbet" is preceded by the name of a nonfruit characterizing ingredient (e. g. "mint sherbet") such designation is misleading, nor is there evidence that such nonfruity products are not legitimate articles if they can be and are so made as not to simulate ice cream. (R. 72, 411–412, 4219, 4238, 4241–4244, 4249, 4257, 4304, 4834, 4914–4915, 5146–5147, 5249)

45. Findings 15, 16, and 17 are applicable to fruit sherbet, except that the record shows no use of dried fruits in sherbet. When fruit is used it is screened or crushed. Screened or crushed tomato and rhubard, which have fruity characteristics (cf. definitions and standards of identity for fruit preserves, 5 F. R. 3557), are sometimes used instead of fruit or fruit juice. (R. 70–71, 270–271, 417–418, 543, 1960, 2517–2518, 3033, 4189–4190, 4219, 4221–4222, 4278–4279, 4289, 4303, 4372)

46. Sherbet is frequently called "milk sherbet," and this designation is used in many State laws defining the product. Some of the essential characteristics of fruit sherbet are imparted by its content of milk fat and nonfat milk solids. The milk constituent solids of fruit sherbet are ordinarily obtained by adding unflavored ice cream mix, with or without the addition of one or more of the dairy products specified in findings 2 and 3 as suitable for use in making ice cream. Sometimes milk is used alone or in combination with other dairy products so specified. All of the dairy ingredients specified in findings 2 to 5, inclusive, as suitable for use in ice cream are also suitable for use in fruit sherbet, but there is no occasion for the use of the ingredient so specified in finding 5 except as a component of ice cream mix, and the use of skim milk in any of its forms as the sole dairy ingredient would tend to mislead consumers. (R. 70, 72, 400, 401–402, 440, 443A, 530, 4186–4187, 4214, 4286)

47. The quantity of milk constituent solids necessary to characterize fruit sherbet is at least 2 percent by weight of the finished product. More than 5 percent of such solids tends to make the product resemble ice cream, as does a quantity of milk fat above 2 percent. Maxima of not more than 5 percent total milk constituent solids and not more than 2 percent milk fat, and minima of not less than 2 percent total milk constituent solids and not less than 1 percent milk fat, are necessary to characterize fruit sherbet and to differentiate it from ice cream and water ice. (R. 440A, 4188, 4215–4217, 4236, 4281–4282, 4371–4372)

48. The sweetening agents which are used and are suitable for use in fruit sherbet are sugar, dextrose, invert sugar (as paste or sirup), corn sirup, and dried corn sirup. (R. 1786–1787, 1820, 1838, 1858, 1917, 1971, 4286)

49. Finding 24 is applicable to fruit sherbet, except that there is evidence indicating the use and suitability of egg white as a stabilizer in fruit sherbet. Pectin is also stuitable for use for this purpose, in a quantity not more than 0.5 percent by weight. (R. 70, 88, 439, 530, 2417, 2420–2421, 2430–2431, 2441, 2459–2460, 2478–2479, 2502, 4218, 4282–4285)

50. Most State laws defining sherbet are designed to prevent its manufacture in simulation of ice cream. One requirement of many such laws is that the acidity of the product be not less than 0.35 percent, calculated as lactic acid. The acidity of sherbet averages about 0.5 to 0.6. A minimum of 0.35 acidity, calculated as lactic acid, is a reasonable limit for fruit sherbet. (R. 22, 71–72, 2903–2904, 4257)

51. To reach the desired acidity harmless acids are usually added. Those generally used and suitable for use are citric, tartaric, lactic, and malic. (R. 202–203, 207, 1978, 2006, 4197, 4223–4224, 4291–4292)

52. Salt and eggs or egg yolks are sometimes present in fruit sherbet as a result of the use of ice cream mix in its preparation (see findings 23 and 46). The quantity of egg yolk solids thus introduced is less than ½ of 1 percent. (R. 70, 400, 4211)

53. Much fruit sherbet is colored. When so used that they do not create a misleading impression as to the quantity of fruit or fruit juice present, colorings are suitable ingredients of fruit sherbet. (R. 70, 1960, 2504–2506, 4200, 4211, 4251)

54. Some frozen foods sold as fruit sherbet contain no fruit or fruit juice but are characterized by natural or artificial fruit flavoring, including extracts or emulsions of citrus oils. These same flavorings are frequently used as "kickers" with some fruit or fruit juice, that is, they enhance the fruity characteristics of the finished product to an intensity that would otherwise be reached only by using more fruit or fruit juice. Such flavorings produce a given flavor intensity at a lesser cost than does fruit or fruit juice. The most important and expensive single constituent of fruit sherbet is fruit or fruit juice. Authorization to use such flavorings in any frozen product having the apparent characteristics of fruit sherbet would tend to deception of consumers. (R. 70–71, 411, 530, 2504–2507, 3031–3035, 4189, 4192–4195, 4246, 4261–4262, 4278–4279, 4289, 4295, 4336–4337, 4372, 4507, 5146–5147)

55. The dairy ingredient of fruit sherbet is pasteurized, and may be homogenized, either before or after addition to the fruit sherbet mix. Pasteurization of the dairy ingredient is generally recognized as an essential step in the preparation of commercial fruit sherbet, and consumers expect the protection from milk-borne diseases afforded by pasteurization (see finding 33). (R. 72, 214, 398, 401)

56. Finding 38 is applicable to fruit sherbet. The normal overrun in fruit sherbet is less than that in ice cream. A requirement that the weight of fruit sherbet be not less than 6 pounds per gallon is effective in preventing the excessive incorporation of air, and is a reasonable limit. (R. 69, 72, 449, 4278, 4290, 4386)

57. The common and usual name of each kind of fruit sherbet is the word "sherbet," preceded by the common or usual name of the fruit from which the fruit ingredient used is obtained.

58. Most of the commercially produced water ices are characterized by their fruity flavor and are of the same composition as the correspondingly flavored commercial fruit sherbets except that no dairy ingredient is used in water ice. Some nonfruity-type water ices are produced, but the record contains insufficient evidence to determine what the composition and characteristics of each of such various products should be. (R. 72–73, 398–399, 4237, 4278, 4363–4365)

59. Findings 45, 48, and 49 are applicable to fruity-type water ice. (R. 72–73, 401)

60. To obtain the desired tartness, the acids specified in finding 51 are frequently used and are suitable for use in fruity-type water ice. (R. 72–73, 212, 1234–1235)

61. Findings 53, 54, and 56 are applicable to fruity-type water ice. (R. 72–73, 89, 1234–1235)

62. The common and usual name of each kind of fruity-type water ice is the word "ice" preceded by the common or usual name of the fruit from which the fruit ingredient used is obtained. (R. 73, 453)

63. There are other frozen foods which differ from ice cream, fruit sherbet, and fruit-type water ice. They are not sold under these names, but usually are referred to collectively as "frozen confections." A proposal was advanced that a definition and standard of identity be prescribed for these articles under the name "frozen confections." The composition and characteristics of these articles are so varied that no blanket requirement sufficiently definitive to be of substantial significance to consumers is practicable. (R. 552, 553, 563, 597–598, 5163)

DEFINITIONS AND STANDARDS OF IDENTITY SUGGESTED BY FOOD AND DRUG ADMINISTRATION, BASED ON EVIDENCE AT 1942 HEARING

§ 20.1 *Ice cream; identity; label statement of optional ingredients.* (a) Ice cream is the food prepared by freezing, while stirring, a pasteurized mix composed of one or more of the optional dairy ingredients specified in paragraph (b) of this section, sweetened with one or more of the optional saccharine ingredients specified in paragraph (c) of this section. One or more of the optional ingredients indicated under subparagraphs (1) to (9), inclusive, of this paragraph and under paragraph (c) (5) to (10), inclusive, of this section may be used, subject to the conditions hereinafter set forth:

(1) Ground spice, ground vanilla beans, infusion of coffee or tea, any natural food flavoring.

(2) Any artificial food flavoring.

(3) Chocolate or cocoa, which may be added as such or as a suspension in sirup, and which may contain disodium phosphate in such quantity that the finished ice cream contains not more than 0.2 percent thereof by weight. For the purpose of this section the term "cocoa" means one or any combination of two or more of the following: cocoa, breakfast cocoa, low-fat cocoa, the unpulverized residual material prepared by removing part of the fat from ground cacao nibs.

(4) Mature fruit, or the juice of mature fruit. The fruit used may be fresh, frozen, canned, or dried, and may be sweetened, thickened with pectin, and acidulated with citric, tartaric, malic, or lactic acid. The fruit is prepared by the removal of pits, seeds, skins, and cores, where such removal is usual in preparing that kind of fruit for consumption as fresh fruit; except that in the case of citrus fruits the whole fruit, including the peel but excluding the seeds, may be used. The fruit juice used may be fresh, frozen, canned, or concentrated.

(5) Nut meats, which may be roasted, cooked in butter, or preserved in sirup.

(6) Malted milk.

(7) Confectionery. For the purpose of this section the term "confectionery" means candy, cakes, cookies, or glacéed fruits.

(8) Properly prepared and cooked cereal.

(9) Any distilled alcoholic beverage, including liqueurs, or any wine, or both.

One or more of the optional ingredients designated under subparagraphs (10) and (11) of this paragraph may be used:

(10) Liquid eggs, frozen eggs, dried eggs, egg yolks, frozen yolks, dried yolks; but the total weight of egg yolk solids in any such ingredient used singly, or in any combination of two or more such ingredients used, is less than 1.4 percent of the weight of the finished ice cream.

(11) Gelatin (with or without admixture of monoglycerides or diglycerides or both of fat-forming fatty acids), algin, extract of Irish moss, psyllium seed husk, agar-agar, gum acacia, gum karaya, locust bean gum, gum tragacanth; but the total weight of the solids of any such ingredient used singly, or of any combination of two or more such ingredients used, is not more than 0.5 percent of the weight of the finished ice cream. Such ingredients may be added in admixture with dextrin.

Coloring may be added. The mix may be seasoned with salt and may be homogenized. The kind and quantity of optional dairy ingredients used, and the content of milk and nonfat milk solids therein, are such that the weights of milk fat and nonfat milk solids are not less than 12 percent and 6 percent, respectively, of the weight of the finished ice cream; except that when one or more of the optional ingredients indicated in subparagraphs (3) to (8), inclusive, of this paragraph are used the weights of milk fat and nonfat milk solids (exclusive of such fat and solids in any malted milk used) are not less than 12 percent and 6 percent, respectively, of the remainder obtained by subtracting the weight of such optional ingredients from the weight of the finished ice cream; but in no case is the weight of milk fat or nonfat milk solids less than 10 percent and 5 percent, respectively, of the weight of the finished

ice cream. The weight of such optional ingredients is their weight exclusive of any sweetening ingredient, water, or any other substance added thereto; and in the case of any ingredient whose proper preparation requires the removal of pits, seeds, skins, cores, peel, shell, or other parts, the weight of such ingredient after it is so prepared; and in the case of concentrated fruit juice the original weight of the juice before it was concentrated; and in the case of dried fruit the weight thereof multiplied by four. The finished ice cream contains not less than 1.6 pounds of total solids to the gallon and weighs not less than 4.5 pounds to the gallon. Any artificial flavoring in any chocolate, cocoa, confectionery, or other ingredient used is an optional ingredient of the finished ice cream.

(b) The optional dairy ingredients referred to in paragraph (a) of this section are cream, butter, milk, concentrated milk, evaporated milk, sweetened condensed milk, dried milk, skim milk, concentrated (evaporated or condensed) skim milk, superheated condensed skim milk, sweetened condensed skim milk, dried skim milk, sweet cream buttermilk, condensed sweet cream buttermilk, dried sweet cream buttermilk, sweetened skim milk which has been concentrated and from which part of the lactose has been removed after crystallization. Water may be added. The sweet cream buttermilk, and the concentrated sweet cream buttermilk or dried sweet cream buttermilk mixed with water to a total solids content of 8.5 percent each, has a titratable acidity of not more than 0.17 percent, calculated as lactic acid, and a bacterial count (microscopic cluster count) of not more than 1,000,000 per cubic centimeter. The term "milk" as used in this section means cow's milk.

(c) The optional saccharine ingredients referred to in paragraph (a) of this section are:

(1) Sugar.
(2) Dextrose.
(3) Invert sugar (paste or sirup).
(4) Corn sirup, dried corn sirup.
(5) Maple sirup, maple sugar.
(6) Honey.
(7) Brown sugar.
(8) Malt sirup.
(9) Dried malt extract.
(10) Molasses (other than blackstrap).

(d) (1) When any artificial flavoring is used, directly or as a component of any other ingredient, the label shall bear the statement "artificially flavored" or "artificial flavoring added" or "with added artificial flavoring," or in lieu thereof, in case the artificial flavoring is a component of another ingredient, "_____ artificially flavored," the blank being filled in with the name of such other ingredient.

(2) Wherever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, such statement shall immediately and conspicuously precede or follow such name, without intervening written, printed, or other graphic matter, except that a word or words indicating the kind of the ice cream may so intervene.

§ 20.2 *Frozen custard, french ice cream, french custard ice cream; identity; label statement of optional ingredients.* Frozen custard, french ice cream, french custard ice cream conforms to the definition and standard of identity, and is subject to the requirements for label statement of optional ingredients, prescribed for ice cream by § 20.1, except that one or more of the optional egg ingredients permitted by § 20.1 (a) (10) are used in such quantity that the total weight of egg yolk solids therein is not less than 1.4 percent of the weight of the finished frozen custard.

§ 20.3 *Fruit sherbets; identity.* (a) Fruit sherbets are the foods each of which is prepared by freezing, while stirring, a mix composed of one or more of the optional fruit ingredients specified in paragraph (b) of this section and one or more of the pasteurized optional dairy ingredients specified in paragraph (c) of this section, sweetened with one or more of the optional saccharine ingredients sugar, dextrose, invert sugar (paste or sirup), corn sirup, and dried corn sirup, and with or without added water. One or more of the optional ingredients indicated under subparagraphs (1) to (3), inclusive, of this paragraph may be used, subject to the conditions hereinafter set forth:

(1) Liquid eggs, frozen eggs, dried eggs, egg yolks, frozen yolks, dried yolks; but the weight of egg yolk solids therein is less than ½ of 1 percent of the weight of the finished fruit sherbet.

(2) Gelatin (with or without admixture of monoglycerides or diglycerides or both, of fat-forming fatty acids), egg white, algin, extract of Irish moss, psyllium seed husk, agar-agar, gum acacia, gum karaya, locust bean gum, gum tragacanth, pectin; but the total weight of the solids of any such ingredient used singly, or of any combination of two or more such ingredients used, is not more than 0.5 percent of the weight of the finished fruit sherbet. Such ingredients may be added in admixture with dextrin.

(3) Citric acid, tartaric acid, malic acid, lactic acid, or any combination of two or more of these, in such quantity as seasons the finished food.

Coloring may be added. The mix may be seasoned with salt and may be homogenized. The kind and quantity of optional dairy ingredients used, and the content of milk fat and nonfat milk solids therein, are such that the weight of milk fat is not less than 1 percent and not more than 2 percent, and the weight of total milk constituent solids is not less than 2 percent and not more than 5 percent, of the weight of the finished fruit sherbet. The titratable acidity of the finished fruit sherbet, calculated as lactic acid, is not less than 0.35 percent. The finished fruit sherbet weighs not less than 6 pounds to the gallon.

(b) The optional fruit ingredients referred to in paragraph (a) of this section are any mature fruit or the juice of mature fruit. The fruit used may be fresh, frozen, or canned; and the fruit juice used may be fresh, frozen, canned, or concentrated. The fruit is prepared by the removal of pits, seeds, skins, and cores, where such removal is usual in preparing that kind of fruit for consumption as fresh fruit, except that in the case of citrus fruits the whole fruit, including the peel but excluding the seeds, may be used. The fruit is screened, crushed, or otherwise comminuted.

(c) The optional dairy ingredients referred to in paragraph (a) of this section are cream, butter, milk, concentrated milk, evaporated milk, sweetened condensed milk, dried milk, skim milk, concentrated (evaporated or condensed) skim milk, superheated condensed skim milk, sweetened condensed skim milk, dried skim milk, sweet cream buttermilk, condensed sweet cream buttermilk, dried sweet cream buttermilk, sweetened skim milk which has been concentrated and from which part of the lactose has been removed after crystallization. Water may be added. The sweet cream buttermilk, and the concentrated sweet cream buttermilk or dried sweet cream buttermilk mixed with water to a total solids content of 8.5 percent, each has a titratable acidity of not more than 0.17 percent, calculated as lactic acid, and a bacterial count (microscopic cluster count) of not more than 1,000,000 per cubic centimeter. The term "milk" as used in this section means cow's milk.

(d) The name of each such fruit sherbet is "_____ sherbet," the blank being filled in with the common name of the fruit or fruits from which the fruit ingredient used is obtained. When two or more fruit names are filled in, such names are in the order of predominance, if any, by weight of the respective fruit ingredients used.

§ 20.4 *Water ices; identity.* (a) Water ices are the foods each of which is prepared by freezing, while stirring, a mix composed of one or more of the optional fruit ingredients specified in paragraph (b) of this section, sweetened with one or more of the optional saccharine ingredients: sugar, dextrose, invert sugar (paste or sirup), corn sirup, and dried corn sirup, and with or without added water. One or more of the optional ingredients indicated under subparagraphs (1) and (2) of this paragraph may be used, subject to the conditions hereinafter set forth:

(1) Gelatin (with or without admixture of monoglycerides or diglycerides or both, of fat-forming fatty acids), egg white, algin, extract of Irish moss, psyllium seed husk, agar-agar, gum acacia, gum karaya, locust bean gum, gum tragacanth, pectin; but the total weight of the solids of any such ingredient used singly, or of any combination of two or more such ingredients used, is not more than 0.5 percent of the weight of the finished water ice. Such ingredients may be added in admixture with dextrin.

(2) Citric acid, tartaric acid, malic acid, lactic acid, or any combination of two or more of these, in such quantity as seasons the finished food.

Coloring may be added. The mix may be seasoned with salt and may be homogenized. The titratable acidity of the finished water ice, calculated as lactic acid, is not less than 0.35 percent. The

finished water ice weighs not less than 6 pounds to the gallon.

(b) The optional fruit ingredients referred to in paragraph (a) of this section are any mature fruit or the juice of mature fruit. The fruit used may be fresh, frozen, or canned; and the fruit juice used may be fresh, frozen, canned, or concentrated. The fruit is prepared by the removal of pits, seeds, skins, and cores, where such removal is usual in preparing that kind of fruit for consumption as fresh fruit, except that in the case of citrus fruits the whole fruit, including the peel but excluding the seeds, may be used. The fruit is screened, crushed, or otherwise comminuted.

(c) The name of each such water ice is "_____ ice," the blank being filled in with the common name of the fruit or fruits from which the fruit ingredient used is obtained. When two or more fruit names are filled in, such names are in the order of predominance, if any, by weight of the respective fruit ingredients used.

Mr. Edward E. Turkel is designated as presiding officer to conduct the hearing, in the place of the Administrator, with full authority to administer oaths and affirmations and to do all other things appropriate to the conduct of the hearing. The presiding officer is required to certify the supplementary record of the proceedings of this hearing to the Administrator for consideration together with the previous record, prior to issuance of a tentative order based on the entire record.

The hearing will be conducted in accordance with the rules of practice provided therefor.

Dated: August 2, 1950.

[SEAL] JOHN L. THURSTON,
Acting Administrator.

[F. R. Doc. 50-6905; Filed, Aug. 7, 1950; 8:48 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 5]

[Docket No. 9751]

EXPERIMENTAL RADIO SERVICES

NOTICE OF PROPOSED RULE MAKING

1. Notice is hereby given of proposed rule making in the above-entitled matter.

2. A proposed revision of Part 5 of the Commission's rules is set forth below. These new rules are designed to cover all experimental radio stations except those authorized under the developmental rules of the various services.

3. This revision is issued under authority of sections 301 and 303 of the Communications Act of 1934, as amended.

4. Any interested party who is of the opinion that the proposed rules should not be adopted in the form set forth herein may file with the Commission on or before September 15, 1950, a written statement or brief setting forth his comments. At the same time, any person who favors the rules as set forth may file a statement in support thereof. The Commission will consider all comments, briefs, and statements presented before taking final action in the matter. If any comments are received which appear to warrant the Commission in holding an oral argument before final action is taken, notice of the time and place of such oral argument will be given such interested parties.

5. In accordance with the provision of § 1.764 of the Commission's rules, an original and fourteen copies of all statements, briefs or comments filed shall be furnished the Commission.

Adopted: August 2, 1950.

Released: August 3, 1950.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

PART 5—EXPERIMENTAL RADIO SERVICES

SUBPART A—GENERAL

SUBPART B—APPLICATIONS AND LICENSES

SUBPART C—TECHNICAL STANDARDS

SUBPART D—OPERATING REQUIREMENTS

SUBPART E—EXPERIMENTAL SERVICE (RESEARCH)

SUBPART F—EXPERIMENTAL SERVICE (DEVELOPMENTAL)

SUBPART A—GENERAL

§ 5.1 *Basis and purpose.* (a) The rules following in this part are promulgated pursuant to the provisions of Title III of the Communications Act of 1934, as amended, which vests authority in the Federal Communications Commission to regulate radio transmissions and to issue licenses for radio stations.

(b) The purpose of this part is to prescribe the manner in which parts of the radio frequency spectrum may be made available for radio experimentation, looking toward the advancement of the science or technique of radio utilization.

§ 5.2 *Services available.* (a) Experimental services are classified, according to the type of experimentations permitted, into two categories as follows:

(1) Experimental Service (Research) Subpart E.

(2) Experimental Service (Developmental) Subpart F.

§ 5.3 *Definition of terms.* For the purpose of this part, the following definitions shall be applicable. For other definitions, refer to Part 2, Frequency Allocations and Treaty Matters; General Rules and Regulations.

(a) *Authorized frequency.* The frequency assigned to a station by the Commission and specified in the instrument of authorization.

(b) *Authorized power.* The power assigned to a radio station by the Commission and specified in the instrument of authorization. The authorized power does not necessarily correspond to the power used by the Commission for purposes of its Master Frequency Record (MFR) and notification to the Bureau of the International Telecommunications Union.

(c) *Experimental service.* Any service conducted by a station utilizing Hertzian waves in connection with research, design, the development of equipment, the determination of engineering data or technique pertaining to radio art, or the development of an existing or proposed radio service.

(d) *Experimental service (research).* An Experimental Radio Service conducted by a station utilizing Hertzian waves solely for scientific or technical radio research not related to an existing or proposed radio service.

(e) *Experimental service (developmental).* An Experimental Radio Service conducted by a station utilizing Hertzian waves for the development of equipment, engineering or operational data, or techniques for an existing or proposed radio service.

(f) *Fixed service.* A service of radiocommunication between specified fixed points.

(g) *Fixed station.* A station in the fixed service.

(h) *Harmful interference.* Any radiation or any induction which endangers the functioning of a radionavigation service or of a safety service or obstructs or repeatedly interrupts a radio service operating in accordance with the Table of Frequency Allocations.

(i) *Landing area.* As defined by Title I, section I (22) of the Civil Aeronautics Act of 1938, as amended, Landing Area means any locality, either of land or water, including airdromes and intermediate landing fields, which is used, or intended to be used, for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo.

(j) *Land station.* A station in the mobile service not intended for operation while in motion.

(k) *Mobile service.* A service of radiocommunication between mobile and land stations, or between mobile stations.

(l) *Mobile station.* A station in a mobile service intended to be used while in motion or during halts at unspecified points.

(m) *Mean power or radio transmitter.* The power supplied to the antenna during normal operation, averaged over a time sufficiently long compared to the period corresponding to the lowest frequency encountered in actual modulation.

(n) *Peak power of a radio transmitter.* The mean power supplied to the antenna during one radio frequency cycle at the highest crest of the modulation envelope, taken under conditions of normal operation.

(o) *Person.* An individual, partnership, association, joint stock company, trust, or corporation.

(p) *Public correspondence.* Any telecommunication which the offices and stations, by reason of their being at the disposal of the public, must accept for transmission.

(q) *Radio service.* An administrative subdivision of the field of radiocommunication. In an engineering sense, the subdivisions may be made according to the method of operation, as, for example, mobile service and fixed service. In a regulatory sense, the subdivisions may be descriptive of particular groups of licensees, as, for example, the groups of persons licensed under this part.

(r) *Station authorization.* Any construction permit, license, or special temporary authorization issued by the Commission.

§ 5.4 *General citizenship restrictions.* A station license may not be granted to or held by:

(a) Any alien or the representative of any alien.

(b) Any foreign government or the representative thereof.

(c) Any corporation organized under the laws of any foreign government.

(d) Any corporation of which more than one-fifth of the capital stock is owned of record or voted by: Aliens or their representatives; a foreign government or representative thereof; or any corporation organized under the laws of a foreign country.

(e) Any corporation of which any officer or director is an alien.

(f) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, if the Commission finds that the public interest will be served by the refusal or revocation of such license; or

(g) Any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by: Aliens or their representative; a foreign government or representative thereof; or any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

§ 5.5 *Transfer and assignment of station authorization.* A station authorization, the frequencies authorized to be used by the grantee of such authorization, and the rights therein granted by such authorization shall not be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of, or indirectly by transfer of control of any corporation holding such authorization, to any person, unless the Commission shall, after securing full information decide that said transfer is in the public interest, and shall give its consent in writing. Requests for authority to transfer or assign a station authorization shall be submitted on the forms prescribed by § 5.55.

SUBPART B—APPLICATIONS AND LICENSES

§ 5.51 *Station authorization required.* No radio transmitter shall be operated in the Experimental Radio Services except under and in accordance with a proper station authorization granted by the Federal Communications Commission.

§ 5.52 *Procedure for obtaining a radio station license.* (a) The first step toward obtaining a station license is the filing of an application for a construction permit in accordance with these rules. After the construction and installation are completed, an application for station license may be submitted in accordance with § 5.55.

(b) In the case of transmitters which are purchased as complete packaged units and used without modification the application for license may be submitted simultaneously with the application for construction permit, except in those instances when the filing of Form 401a is required under § 5.55.

(c) When the design and construction of the transmitting equipment is an integral part of the experimental program, the application for license may be submitted simultaneously with the application for construction permit, except in those instances when the filing of Form 401a is required under § 5.55.

§ 5.53 *Filing of applications.* (a) To assure that necessary information is supplied in a consistent manner by all persons, standard forms are prescribed for use in connection with the majority of applications and reports submitted for Commission consideration. Standard numbered forms applicable to these radio services are discussed in § 5.55 and may be obtained from the Washington, D. C., office of the Commission, or from any of its engineering field offices. Concerning matters where no standard form is applicable, the informal application procedure outlined in § 5.55 (k) should be followed.

(b) Any application for radio station authorization and all correspondence relating thereto shall be submitted to the Commission's office at Washington, D. C. An application for commercial radio operator permit or license may be submitted to any of the Commission's engineering field offices, or to the Commission's office at Washington 25, D. C.

(c) Unless otherwise specified, an application shall be filed at least sixty days prior to the date on which it is desired that Commission action thereon be completed.

(d) Each application for station authorization shall be specific and complete with regard to station location, proposed equipment, power, antenna height, and operating frequency; and other information required by the application form and these rules.

(e) Applications involving operation at temporary locations:

(1) When a land station or a fixed station is to remain at a single location for less than six months, the location is considered to be temporary and the procedure outlined in § 5.65 shall apply.

(2) When a land station or fixed station authorized to operate at temporary locations remains at a single location for more than six months, an application for modification of the station authorization to specify the permanent location shall be filed within thirty days after expiration of the six-month period.

(f) Unless otherwise specified in a particular case or for a particular form, each application shall be filed in duplicate.

§ 5.54 *Who may sign applications.* One copy of each application for an authorization shall be signed under oath or affirmation by the applicant if the applicant be an individual, or any one of the partners if an applicant be a partnership, by an officer if the applicant be a corporation, or by a member who is an officer if the applicant be an unincorporated association.

§ 5.55 *Forms to be used—(a) Application for construction permit for land stations and fixed stations.* A separate application for construction permit shall be submitted on FCC Form 401 for each station to be located at a fixed point. Such application shall be accompanied by FCC Form 401a, in quadruplicate, in all cases when:

(1) The antenna and supporting structures proposed to be erected will

exceed an over-all height of 150 feet above ground level; or

(2) The antenna is to be located within 3 miles of a landing area and will exceed an over-all height of one foot above ground for each 100 feet of distance, or fraction thereof, from the nearest boundary of the landing area.

(b) *Description of antenna structure.* When required to be submitted, by the terms of paragraph (a) of this section, FCC Form 401a shall be submitted in quadruplicate. There shall be attached to each copy of the form a sketch showing the antenna and supporting structure as well as a map showing the location of the antenna, landing areas in the vicinity thereof, and all tall structures that may affect the requirement for marking the antenna or supporting structure.

(c) *Application for construction permit for mobile station.* Application for construction permit for any number of mobile units to be operated in the same service, including hand-carried or pack-carried units, may be combined into one application and shall be submitted on FCC Form 401.

(d) *Application for station license.* Application for station license shall be filed on FCC Form 403 upon completion of construction or installation in acordance with the terms and conditions set forth in the construction permit.

(e) *Application for modification of construction permit.* Separate application for modification of construction permit shall be submitted on FCC Form 401 for each station to be located at a fixed point. Application for modification of construction permit for any number of mobile units to be operated in the same service, including hand-carried or pack-carried units, may be combined into one application and shall be submitted on FCC Form 401.

(f) *Application for modification of station license.* Application for modification of station license shall be submitted on FCC Form 403. A blanket application for modification of a group of station licenses of the same class may be submitted in those cases where the modification requested is the same for all stations covered by the application. The individual stations covered by such application shall be clearly identified therein.

(g) *Application for renewal of license.* Application for renewal of station license shall be submitted on FCC Form 405. A blanket application may be submitted for renewal of a group of station licenses in the same class. The individual stations covered by such applications shall be clearly identified thereon. Unless otherwise directed by the Commission, each application for renewal of license shall be filed at least 60 days prior to the expiration date of the license to be renewed.

(h) *Application for additional time to construct radio station.* FCC Form 701 shall be submitted to the Commission in duplicate, whenever it is necessary to request an extension of the time limit specified on a valid construction permit.

(i) *Application for consent to assignment of radio station construction permit or license.* Application on FCC Form 702 shall be submitted to the Commission when the legal right to construct or to control the use and operation of a station is to be transferred as a result of a voluntary act (contract or other agreement) or an involuntary act (death or legal disability) of the grantee of a permit or station license or by involuntary assignment of the physical property constituting the station under a court decree in bankruptcy proceedings, or other court order, or by operation of law in any other manner. Such application must be accompanied by statements signed by the proposed assignee which supply information required of an original licensee by § 5.57.

(j) *Application for consent to transfer of control of corporation holding construction permit or station license.* Application for consent to transfer of control shall be submitted to the Commission on FCC Form 703 whenever it is proposed to change the control of a corporate permittee or licensee.

(k) *Informal application.* (1) An application not submitted on a standard form prescribed by the Commission is considered to be an informal application. Each informal application shall be submitted in duplicate, normally in letter form, and with the original signed under oath or affirmation. Each application shall be clear and complete within itself as to the facts presented and the action desired.

(2) An informal application for authority to operate transmitting equipment will be accepted only under the conditions set forth in § 5.56.

§ 5.56 *Procedure for obtaining a special temporary authorization.* (a) The Commission may issue a special temporary authorization under this part:

(1) In cases where an urgent need is shown for operation of an authorized station for a limited time only, in a manner other than that specified in the existing authorization, but not in conflict with the Commission's rules.

(b) An application for special temporary authorization may be filed as an informal application in the manner prescribed by § 5.55 (k) and shall contain the following information:

(1) Name, address, and citizenship status of applicant.

(2) Need for special action.

(3) Type of operation to be conducted.

(4) Purpose of operation.

(5) Time and date of proposed operation.

(6) Class of station and nature of service.

(7) Location of station.

(8) Equipment to be used, including name of manufacturer, model and number of units.

(9) Frequency(s) desired.

(10) Plate power input to final radio frequency stage.

(11) Type of emission.

(12) Antenna height.

(c) No request for special temporary authorization will be considered unless full particulars as to the purpose for which the request is made are stated, and unless the request is received in the Commission at least 10 days prior to the date of the proposed operation. A request received within less than 10 days may be accepted upon due showing of sufficient reason for the delay in submitting the request.

§ 5.57 *Supplementary statements required*—(a) *Showing.* In addition to the specific information required for each particular class of station operating in the Experimental Radio Services as covered by §§ 5.204 and 5.252 whichever is applicable, each applicant for a station authorization must enclose with his application for construction permit a satisfactory showing in regard to the following:

(1) That the applicant is a person qualified to carry forward the proposed program of experimentation;

(2) That the program of experimentation will be conducted by qualified personnel, and the applicant possesses adequate technical facilities to carry forward the program and has made adequate financial appropriations toward this end;

(3) That the applicant has an organized plan of experimentation leading to (a) specific objective(s);

(4) That the program of experimentation has reasonable promise of contribution to the development, extension, or expansion of the radio art, or is along lines not already investigated;

(5) That the applicant has a program of experimentation that has reached a stage in the laboratory where actual transmission by radio is essential to its further progress;

(6) That the station(s) shall be operated in accordance with the applicable Commission's rules and regulations and only in such a manner and at such times as to preclude harmful interference with established stations or services;

(7) That the applicant will have, through ownership, lease, or other agreement, exclusive control over the transmitting apparatus.

(b) *Confirmation clauses.* In addition to the showing required by paragraph (a) of this section, a statement shall be filed with and made a part of each application for construction permit for a station in these services confirming the applicant's understanding:

(1) That all operations on the frequencies assigned will be on an experimental basis, and conducted in accordance with the provisions of this part and as specified in the station instrument of authorization;

(2) That the granting of the authority requested shall not be construed as a finding on the part of the Commission:

(i) That the frequencies authorized are the best suited to the particular purpose to be served by the station;

(ii) That the applicant is qualified to operate a station in a service on any basis other than experimental;

(iii) That the applicant will be authorized to operate on any basis other than experimental;

(iv) That the Commission is obligated by the results of the experimental program to make provision in the service-allocation plan for the applicant's type of operation.

(3) That the applicant desires and is willing to conduct and finance the experimental program with full knowledge

and understanding of the provisions of th section.

(c) *Cancellation provisions.* The applicant for a station in these services accepts the license with the express understanding: (1) That the authority to use the frequency or frequencies assigned is granted upon an experimental basis only and does not confer any right to conduct an activity of a continuing nature; and (2) that said grant is subject to change or cancellation by the Commission at any time without hearing if in its discretion the need for such action arises.

§ 5.58 *Partial grant.* Where the Commission, without a hearing, grants an application in part, or with any privileges, terms or conditions other than those requested, the action of the Commission shall be considered as a grant of such application unless the applicant shall within 20 days from the date of such grant, or from its effective date if a later date is specified, file with the Commission a written request rejecting the grant as made. Upon receipt of such request, the Commission will vacate its original action and set the application for hearing.

§ 5.59 *Defective applications.* (a) An application which is not in accordance with the Commission's rules or other requirements will be considered defective and will be returned to the applicant.

(b) If an applicant is requested by the Commission to file any documents or information not included in the prescribed application form, a failure to comply with such request will constitute a defect in the application.

(c) Applications which are not in accordance with the Commission's rules, regulations or other requirements will be considered defective unless accompanied by a petition to amend any rule or regulation with which the application is in conflict.

§ 5.60 *Amendment or dismissal of applications.* Any application may be amended or dismissed without prejudice upon request of the applicant prior to the time the application is granted or designated for hearing. Each amendment to, or request for dismissal of an application shall be signed, authenticated, and submitted in the same manner and with the same number of copies as required for the original application. All subsequent correspondence or other material which the applicant desires to have incorporated as a part of an application already filed shall be submitted in the form of an amendment to the application.

§ 5.61 *Construction period.* Each radio station construction permit issued by the Commission will specify the date of grant as the earliest date of commencement of construction and installation, and a maximum of eight months thereafter as the time within which construction shall be completed and the station ready for operation, unless otherwise determined by the Commission in any particular case.

§ 5.62 *License required for separate experimental projects.* A separate station license will be required for each class of station in the experimental radio services. Application for a class of station embracing widely divergent and unrelated experimentations normally will require a separate license for each phase of the experimental program: *Provided, however,* The Commission may, when circumstances warrant, issue a single license embracing the entire project.

§ 5.63 *License period.* (a) Licenses for stations in the Experimental Radio Services will be issued normally for a period of one year unless otherwise stated in the instrument of authorization, and each respective class of station license shall expire each year at 3:00 a. m., e. s. t., on the first day of the following months:

(1) Experimental Service (Research) June.

(2) Experimental Service (Developmental) October.

(b) Unless otherwise ordered, when an application for a new station license is granted within three months of the expiration date of the license term of the particular class of station involved, the license shall be issued for the unexpired period of the current license term and for the full succeeding term. If granted more than three months from the normal expiration date, the license will be issued for the unexpired period of the current license term only.

(c) If the Commission approves a modification of a license, a modified license will be issued for the unexpired license period. If such period is 30 days or less, the application will also be treated as an application for renewal and, if approved, a new authorization will be issued to indicate this unexpired period plus the full succeeding term of the license as designated in paragraph (a) of this section.

§ 5.64 *Change in equipment.* (a) A change may be made in a licensed transmitter without specific authorization from the Commission provided: (1) The change does not result in operation inconsistent with any term of the outstanding authorization for the station involved; and (2) a description of the change is incorporated in the next application for renewal or modification of license.

(b) Prior authorization from the Commission is required before the following antenna changes may be made at a station at a fixed location:

(1) Any change which will either increase or decrease the antenna height; and

(2) Any change in the location of an antenna when such relocation involves a change in the geographic coordinates of latitude or longitude by as much as one second, or when such relocation involves a change in street address.

§ 5.65 *Operation at a temporary location.* (a) An application for authority to operate at temporary locations shall specify the general geographical area within which the operation will be confined.

(b) When a station is authorized to operate in an area encompassing two or more Radio Districts, the following notification procedure shall be followed:

(1) When the station is placed in operation for the first time, the Engineer in Charge of the Radio District(s) involved shall be notified.

(2) When the station is moved from one Radio District to another, the Engineer in Charge of each of the two Radio Districts involved shall be notified.

§ 5.66 *Discontinuance of station operation.* In case of permanent discontinuance of operation of a fixed or land station in these services, or in case of permanent discontinuance of operation of all transmitter units listed in the license for a mobile station in these services, the licensee shall forward the station license to the Washington, D. C., office of the Commission for cancellation. A copy of the request for cancellation of the license shall be forwarded to the Commission's Engineer in Charge of the radio district in which the station is located.

§ 5.67 *Policy governing the assignment of frequencies.* (a) Each frequency or band of frequencies, available for assignment to stations in these services, is available on a shared basis only, and will not be assigned for the exclusive use of any one applicant, and such use may also be restricted to one or more specified geographical areas. Normally not more than one frequency in a band of frequencies will be assigned for the use of a single applicant unless a showing is made demonstrating that need for the assignment of additional frequencies is essential to the proposed program of experimentation. Applicants for authorizations should request use of an available frequency in the band in which it is desired to operate. Upon receipt of such application, the Commission will then assign the frequency or frequencies which will cause least interference in the area of proposed operation. In the event a specific frequency is essential for the program of experimentation, requests for use of that specific frequency must be accompanied by a detailed showing of need for the specific frequency requested and must indicate reasons why another frequency in the general vicinity in the radio frequency spectrum will not adequately meet the required needs.

(b) Frequency assignments will be made only on the condition that harmful interference will not be caused to any station operating in accordance with the Table of Frequency Allocation of Part 2 of the Commission's rules.

(c) The frequencies available for use in these services are set forth in §§ 5.203 and 5.253.

SUBPART C—TECHNICAL STANDARDS

§ 5.101 *Frequency stability.* (a) The carrier frequency of each authorized transmitter operating in the Experimental Radio Service on frequencies specified by § 5.203 (a) shall be maintained within plus or minus 0.01 percent unless otherwise designated in the station authorization.

(b) The frequencies assigned in accordance with the provisions of §§ 5.203 and 5.253 shall be maintained to within

the tolerances set forth in the rules governing the service to which the frequencies are assigned in the Table of Frequency Allocations of Part 2 of the Commission's rules unless otherwise designated in the station authorization.

(c) Less restrictive tolerances than those specified in paragraphs (a) and (b) of this section may be authorized for stations in these services provided the applicant presents satisfactory evidence of the need for such tolerances and that the program of research can and will be conducted without causing harmful interference to any other radio service operating in accordance with the Table of Frequency Allocations.

§ 5.102 *Types of emission*—(a) Stations in the Experimental Radio Services may be authorized to use any of the classification of emissions covered in Part 2 of the Commission's rules. A request for a specific type of emission not included in paragraph (b) of this section shall be accompanied by a showing of need therefor, which shall include a statement of the band width required for the proposed operations, a full and complete description of the emission specified and the purpose for which such emission is desired.

(b) The following systems of designating emissions, modulation and transmission may be employed:

Type of modulation or emission	Type of transmission	Supplementary characteristics	Symbol
1. Amplitude	Absence of any modulation		A0
	Telegraphy without the use of modulating audio frequency (on-off keying).		A1
	Telegraphy by the keying of a modulating audio frequency of audio frequencies or by the keying of the modulated emission (special case: an unkeyed modulated emission).		A2
	Telephony	Double Sideband, full carrier	A3
		Single sideband, reduced carrier	A3a
		Two independent sidebands, reduced carrier.	A3b
	Facsimile		A4
	Television		A5
	Composite transmissions and cases not covered by the above.		A9
	Composite transmissions	Reduced carrier	A9c
2. Frequency (or phase) modulated.	Absence of any modulation		F0
	Telegraphy without the use of modulating audio frequency (frequency shift keying).		F1
	Telegraphy by the keying of a modulating audio frequency of audio frequencies or by the keying of the modulated emission (special case: an unkeyed emission modulated by audio frequency).		F2
	Telephony		F3
	Facsimile		F4
	Television		F5
	Composite transmissions and cases not covered by the above.		F9
3. Pulsed emissions	Absence of any modulation intended to carry information.		P0
	Telegraphy without the use of modulating audio frequency.		P1
	Telegraphy by the keying of a modulating audio frequency of audio frequencies, or by the keying of the modulated pulse (special case an unkeyed modulated pulse).	Audio frequency or audio frequencies modulating their pulse in amplitude.	P2c
		Audio frequency or audio frequencies modulating the width of the pulse.	P2d
		Audio frequency or audio frequencies modulating the phase (or position) of the pulse.	P2f
	Telephony	Amplitude modulated pulse	P3d
		Width modulated pulse	P3e
		Phase (or position) modulated pulse.	P3f
	Composite transmissions and cases not covered by the above.		P9

§ 5.103 *Emission limitations.* (a) Each authorization issued to a station operating in these services will show, as the prefix to the emission classification, a figure specifying the maximum authorized bandwidth in kilocycles to be occupied by the emission. The specified band shall contain those frequencies upon which a total of 99 percent of the radiated power appears, extended to include any discrete frequency upon which the power is at least 0.25 percent of the total radiated power. Any radiation in excess of the limits specified in paragraph (c) of this section is considered to be an unauthorized emission.

(b) The emission prefix figures referred to in paragraph (a) of this section for the types of emission covered by § 5.102 shall be as designated in the station instrument of authorization.

(c) For the purpose of demonstrating compliance with paragraph (a) of this section, the following limits apply:

(1) Any emission appearing on any frequency removed from the carrier frequency by at least 50 percent, but not more than 100 percent, of the maximum authorized bandwidth shall be attenuated not less than 25 db below the unmodulated carrier.

(2) Any emission appearing on any frequency removed from the carrier frequency by at least 100 percent of the maximum authorized bandwidth shall be attenuated below the unmodulated carrier by not less than the amount indicated in the following table:

Maximum authorized plate power input to the final radio frequency stage:	*Attenuation* (db)
3 watts or less	40
Over 3 watts and including 150 watts	60
Over 150 watts and including 600 watts	70
Over 600 watts	80

(d) When an unauthorized emission results in harmful interference, the Commission may, in its discretion, require appropriate technical changes in equipment to eliminate such interference.

§ 5.104 *Modulation requirements.* Modulation requirements of stations in the Experimental Radio Services shall not be in excess of that necessary for the conduct of the authorized program of experimentation nor shall the emissions exceed the limitations imposed by § 5.103 of this part, unless specifically authorized by the Commission.

§ 5.105 *Power and antenna heights.* (a) The effective radiated power and antenna height which may be used by a station in this service shall be no more than the minimum necessary to satisfactorily carry on the authorized program of experimentation. No station shall operate at any time with power in excess of that authorized in the station instrument of authorization. In cases of harmful interference, the Commission may order a change in the effective radiated power or antenna height, or both.

(b) The maximum carrier power requested by an applicant shall not be in excess of the maximum obtainable carrier power output of the transmitter consistent with satisfactory technical operation.

§ 5.106 *Transmitter control requirements.* (a) Each transmitter shall be so installed and protected that it is not accessible to or capable of operation by persons other than those duly authorized by the licensee.

(b) A control point is an operating position which meets all of the following conditions:

(1) The position must be under the control and supervision of the licensee;

(2) It is a position at which the monitoring facilities required by this section are installed; and

(3) It is a position at which an operator responsible for the operation of the transmitter is stationed.

(c) Each station shall be provided with a control point, the location of which will be specified in the license. It will be assumed that the location of the control point is the same as that of the transmitting equipment unless the application includes a request for a different location. Authority must be obtained from the Commission for the installation of additional control points.

(d) A dispatch point is a position from which messages may be transmitted under the supervision of a control point operator. Dispatch points may be installed without authorization from the Commission.

(e) At each control point the following facilities shall be installed:

(1) A carrier operated device which will provide continuous visual indication when the transmitter is radiating; or, in lieu thereof, a pilot lamp or meter which will provide continuous visual indication when the transmitter control circuits have been placed in a condition to produce radiation: *Provided, however,* That the provisions of this subparagraph shall not apply to hand-carried or pack-carried transmitters;

(2) Equipment to permit the operator to aurally monitor all transmissions originating at dispatch points under his supervision; and capable of receiving transmissions from co-channel stations to which harmful interference might be caused.

(3) Facilities which will permit the operator either to disconnect the dispatch point circuits from the transmitter or to render the transmitter inoperative from any dispatch point under his supervision; and

(4) Facilities which will permit the operator to turn the transmitter carrier on and off at will.

§ 5.107 *Transmitter measurements.* (a) The licensee of each station in the Experimental Radio Services shall employ suitable procedures to determine that the frequency deviation, power, and modulation do not exceed the limits prescribed in the station authorization.

(b) The transmitter operating characteristics shall be checked and adjustments made, if necessary, at the beginning of each period of operation and as often thereafter as necessary to maintain the transmitter's operation within the limits specified on the instrument of authorization.

(c) Exceptions to these provisions may be made, provided the applicant makes a satisfactory showing that the nature of the proposed program of experimentation precludes compliance therewith.

§ 5.108 *Tests.* (a) When construction is completed in exact accordance with the terms of the construction permit, the technical provisions of the application therefor and the applicable rules of the Commission, and after an application for station license has been filed with the Commission, the permittee is authorized to conduct tests in exact accordance with the terms of the construction permit: *Provided,* That:

(1) The Engineer in Charge of the local Radio District is notified two days in advance of the beginning of tests.

(2) The Commission may cancel, suspend, or change the date of beginning of such tests if and when such action may appear to be in the public interest, convenience and necessity.

(3) Tests will not be authorized after the expiration date of the construction permit.

(4) The authorization for tests embodied in this section shall not be constructed as constituting a license to operate but as a necessary part of construction.

(b) When a construction permit and license or a construction permit and modification of licenses are issued simultaneously for a station, such station may be placed in operation without notification to the Engineer in Charge of the local Radio District, except as required by § 5.65.

SUBPART D—OPERATING REQUIREMENTS

§ 5.151 *General limitations on use.* (a) The following transmission limitations are applicable to all classes of stations in these services and are in addition to the specific requirements applicable to each respective class of service as covered under Subparts E and F of this part:

(1) Stations may make only such transmissions as are necessary and directly related to the conduct of the licensee's stated program of experimentation as specified in his application for construction permit and license and the related station instrument of authorization, and as governed by the provisions of the rules and regulations contained in this part. All transmissions shall be limited to the minimum practical transmission time.

(2) When transmitting, the licensee must use every precaution to insure that the radio frequency energy emitted will not cause harmful interference to the services carried on by stations operating in accordance with the Table of Frequency Allocations of Part 2 of the Commission's rules and, further, that the power radiated is reduced to the lowest practical value consistent with the program of experimentation for which the station authorization is granted. If harmful interference to an established radio service develops, the licensee shall cease transmissions and such transmissions shall not be resumed until the interference has been eliminated.

(b) Unless expressly permitted in the instrument of authorization, experimental stations shall not be used:

(1) To transmit the program of any other station, except in conjunction with the authorized program of experimentation.

(2) To transmit programs intended for public reception or render any communication service.

§ 5.152 *Station identification.* Each class of station in these services, shall, unless specifically exempted by the terms of the station authorization, transmit its assigned call sign at the end of each complete transmission: *Provided, however,* That the transmission of the call sign at the end of each transmission is not required for projects requiring continuous, frequent, or extended use of the transmitting apparatus, if, during such periods and in connection with such use, the call sign is transmitted at least once every fifteen minutes.

§ 5.153 *Suspension of transmission required.* The radiations of the transmitter shall be suspended immediately upon detection or notification of a deviation from the technical requirements of the station authorization until such deviation is corrected, except for transmissions concerning the immediate safety of life or property, in which case the transmissions shall be suspended as soon as the emergency is terminated.

§ 5.154 *Mobile installations in vehicles not under the continuous control of the licensee.* A mobile radio station licensed in these services may not be installed or maintained in a vehicle, aircraft, or vessel, which is not at all times controlled exclusively by the licensee, unless precautions have been taken to eliminate effectively the possibility of the licensed transmitter being operated during the period that the vehicle, aircraft, or vessel is not under the control of the licensee.

§ 5.155 *Operator requirements.* (a) All transmitter adjustments or tests during or coincident with the experimental program authorized, or with the installation, servicing, or maintenance of a radio station, which may affect the proper operation of such station, shall be made by or under the immediate supervision and responsibility of a person holding a first or second class commercial radio operator license, either radiotelephone or radiotelegraph, who shall be responsible for the proper functioning of the station equipment: *Provided, however,* That only persons holding a first or second class commercial radiotelegraph operator license shall perform such functions at radiotelegraph stations transmitting by any type of the Morse Code.

(b) Except under the circumstances specified in paragraph (a) of this section, only a person holding a commercial radiotelegraph operator license or permit of any class issued by the Commission shall operate a station when transmitting, in a normal[1] manner and in accordance with the experimental program authorized, radiotelegraphy by any type of the Morse Code: *Provided,* That when such telegraphy is transmitted by automatic means for identification, for testing, or for actuating an automatic selective signalling device, the holder of a radiotelephone operator license may operate the station under the conditions set forth in § 13.62 (b) (1) of the rules governing Commercial Radio Operators.

(c) Except under the circumstances specified in paragraphs (a) and (b) of this section, and except as limited by paragraphs (g) through (j) of this section, an unlicensed person may operate a mobile station when transmitting, in a normal[1] manner and in accordance with the experimental program authorized, on frequencies above 25 Mc. after being authorized to do so by the station licensee.

(d) Except under the circumstances specified in paragraphs (a) and (b) of this section, and except as limited by paragraphs (g) through (j) of this section, only a person holding a commercial radio operator license or permit of any class issued by the Commission, shall operate in a mobile station when transmitting, in a normal[1] manner and in accordance with the experimental program authorized, on frequencies below 25 Mc.: *Provided, however,* That an unlicensed person, after being authorized to do so by the station licensee, may operate such a mobile station when transmitting, in a normal[1] manner and in accordance with the experimental program authorized, on frequencies below 25 Mc. while it is associated with and under the operational control of a land station of the same licensee.

(e) Except under the circumstances specified in paragraphs (a) and (b) of this section, and except as limited by

[1] Normal transmission is defined as transmissions, other than those occurring in the course of transmitter adjustments or tests, during or coincident with the experimental program authorized or the installation, service or maintenance of the station equipment.

paragraphs (g) through (j) of this section, land stations and fixed stations shall be operated in accordance with the following when transmitting in a normal[1] manner and in accordance with the experimental program authorized:

(1) From a control point, only by a person holding a commercial radio operator license or permit of any class issued by the Commission.

(2) From a dispatch point, an unlicensed person may operate such stations after being authorized to do so by the station licensee: *Provided, however,* That such operation shall be under the direct supervision and responsibility of a person who (i) holds a commercial radio operator license or permit of any class issued by the Commission, and who (ii) is on duty at a control point.

(f) Except under the circumstances specified in paragraph (a) of this section, and except as limited by paragraphs (g) through (j) of this section, no person, whether or not a licensed operator, is required to be in attendance at a station when transmitting, in a normal[1] manner and in accordance with the experimental program authorized, on frequencies solely above 50 Mc and when either:

(1) Transmitting for telemetering purposes or

(2) When properly serving as a relay station and for the purpose retransmitting by self-actuating means a radio signal received from another radio station or stations.

(g) The provisions of this section, authorizing certain unlicensed persons to operate certain stations, shall be applicable only to stations in the domestic service except that the provisions of paragraph (e) (2) of this section shall be applicable to stations in either the domestic or international service. For the purpose of this section, a station in the domestic service is one which is located within the United States, its territories or possessions and which, when communicating with other stations, is in communication exclusively with one or more other United States stations which are also located in the United States, its territories or possessions; a station in the international service is one which is not in the domestic service as just defined.

(h) The provisions of this section authorizing certain unlicensed persons to operate mobile stations shall not be construed to change or diminish in any respect the responsibility of station licensees to have and to maintain control over the stations licensed to them (including all transmitter units thereof), or for the proper functioning and operation of those stations (including all transmitter units thereof) in accordance with the terms of the licenses of those stations.

(i) Notwithstanding any other provisions of this section, unless the transmitter is so designed that none of the operations necessary to be performed during the course of transmission, in a normal[1] manner and in accordance with the experimental program authorized, may cause off-frequency operation or result in any unauthorized radiation, such transmitter shall be operated by a person holding a first or second class commercial radio operator license (either radiotelephone or radiotelegraph as may be appropriate for the type of emission being used) issued by the Commission.

(j) Any reference in this section to a commercial radio operator license or permit of any class issued by the Commission shall not be construed to include Aircraft Radiotelephone Operator Authorizations.

§ 5.156 *Posting of operator license.* (a) The original license of each operator of a station in these services, other than an operator exclusively performing service and maintenance duties, shall be posted or kept immediately available at the place where he is on duty as an operator: *Provided, however,* That if an operator who is on duty holds a restricted radiotelephone operator permit of the card form (as distinguished from such document of the diploma form) or holds a valid license verification card (FCC 758–F) attesting to the existence of any other valid commercial radio operator license, he may have such permit or verification card, as the case may be, in his personal possession.

(b) Whenever a licensed operator is required for a mobile station, the original license of each such operator, other than an operator exclusively performing service and maintenance duties, shall be kept in his possession whenever he performs the duties of an operator at such station: *Provided,* That in lieu of an original license of the diploma form (as distinguished from such document of the card form) he may have in his personal possession a valid verification card attesting to its existence.

(c) The original license of every station operator who exclusively performs service and maintenance duties at that station shall be posted at the transmitter involved whenever the transmitter is in actual operation while service or maintenance work is being performed by him or under his immediate supervision and responsibility: *Provided,* That in lieu of posting his license, he may have on his person either his license or a valid verification card.

§ 5.15 *Transmitter identification card and posting of station license.* (a) The current authorization of each station in these services authorized at a fixed location shall be posted in a conspicuous place in the principal control position of that station. At all other control points listed on the station authorization, a photocopy of the authorization shall be posted. In addition, an executed transmitter Identification Card (FCC Form No. 452–C, Revised—obtainable from the Washington, D. C. office of the Commission, or from any of its field offices) shall be affixed to each transmitter operated at a fixed location, when such transmitter is not in view of, and readily accessible to, the operator at the principal control position. The following information shall be entered on the card by the permittee or licensee:

(1) Name of permittee or licensee.

(2) Station call sign assigned by the Commission.

(3) Exact location or locations of the station's records of operation.

(4) Frequency or frequencies on which the transmitter to which the card is attached is adjusted to operate; and

(5) Signature of the permittee or licensee, or a designated official thereof.

(b) The current station authorization for each station authorized for mobile operation shall be retained as a permanent part of the station record but need not be posted. In addition, a transmitter Identification Card (FCC Form No. 452–C, Revised) executed in accordance with paragraph (a) of this section, shall be affixed to each mobile transmitter or associated control equipment. When the transmitter is not in view of, and readily accessible to, the operator, it is preferred that the Identification Card be affixed to the control equipment at the transmitter operating position.

§ 5.158 *Communication with other stations.* Stations in the Experimental Radio Service may be authorized under special Commission authority to communicate with stations in other services and with U. S. Government stations for communications essential to the conduct of program of experimentation of the permittee or licensee. Authority for such transmissions may be granted by the Commission only upon a written request therefor by the permittee or licensee accompanied by a statement of need for such communications, stations with which communications are desired, frequency to be used, and any other data pertinent to the proposed operations.

§ 5.159 *Operation during an emergency.* The licensee of any station in the Experimental Radio Services may, during a period of emergency in which the normal communication facilities are disrupted as a result of hurricane, flood, earthquake, or similar disaster, utilize such station for emergency communication service by communicating in a manner other than that specified in the station license: *Provided:*

(a) That as soon as possible after the beginning of such emergency use, notice be sent to the Commission at Washington, D. C., and to the Engineer in Charge of the district in which the station is located, stating the nature of the emergency and the use to which the station is being put, and

(b) That the emergency use of the station shall be discontinued as soon as substantially normal communication facilities are again available, and

(c) That the Commission at Washington, D. C., and the Engineer in Charge shall be notified immediately when such special use of the station is terminated: *Provided further,*

(d) That in no event shall any station engage in emergency transmission on frequencies other than, or with power in excess of, that specified in the instrument of authorization or as otherwise expressly provided by the Commission, or by law: *And provided further,*

(e) That the Commission may, at any time, order the discontinuance of any such emergency communication undertaken under this section.

See footnote on p. 5126.

§ 5.160 *Inspection of stations.* All stations and records of stations in these services shall be made available for inspection at any time while the station is in operation or shall be made available for inspection upon reasonable request of an authorized representative of the Commission.

§ 5.161 *Inspection of tower lights and associated control equipment.* The licensee of any station in the Experimental Radio Services which has an antenna or antenna supporting structure(s) required by the terms of the station authorization to be illuminated shall:

(a) Make a daily check of the tower lights either by visual observation or an automatic indicator to insure that all such lights are functioning properly as required;

(b) Report immediately by telephone or telegraph to the nearest Airways Communication Station or office of Civil Aeronautics Administration any observed failure to any code and/or rotating beacon light(s) if such failure(s) is not corrected within thirty minutes after it has been observed, regardless of the cause of such failure. Further notification by telephone or telegraph shall be given the above station or office immediately upon resumption of the required illumination;

(c) Inspect at intervals of at least once each three months all code and rotating beacon light(s) and automatic lighting control devices to insure that such apparatus is functioning properly as required.

§ 5.162 *Answers to notices of violations.* Any licensee receiving official notice of a violation of the terms of the Communications Act of 1934, as amended, any legislative act, treaty to which the United States is a party, or the rules and regulations of the Federal Communications Commission, shall, within 3 days from such receipt, send a written answer to the office of the Commission originating the official notice. If an answer cannot be sent, or an acknowledgement made within such 3-day period, acknowledgment and answer shall be made at the earliest practicable date with a satisfactory explanation of the delay. The answer to each notice shall be complete in itself and shall not be abbreviated by reference to other communications or answers to other notices. The reply shall set forth the steps taken to prevent a recurrence of such lack of attention or improper operation.

§ 5.163 *Content of station records.* (a) The licensee of each station in these services shall maintain adequate records of the station's operations, including:

(1) Hours of operation.

(2) All measurements of the frequency(s), including the name of the person making the measurements, observed deviations from the assigned frequency(s), and a statement of any corrective action taken.

(3) Power.

(4) Types of emission.

(5) Chronological record of experimentation conducted.

(6) The name and address of the operator on duty.

(b) For all stations, when service or maintenance duties are performed which may affect their proper operation, the responsible operator shall sign and date an entry in the station record concerned, giving:

(1) Pertinent details of all duties performed by him or under his supervision;

(2) His name and address; and

(3) The class, serial number and expiration date of his license: *Provided, however,* That the information called for under subparagraphs (2) and (3) of this paragraph, so long as it remains unchanged, is not required to be repeated in the case of a person who is regularly employed as operator on a full-time basis at the stations.

(c) For stations whose antenna or antenna supporting structure is required to be illuminated, a record in accordance with the following:

(1) The time the tower lights are turned on and off each day if manually controlled.

(2) The time the daily check of proper operation of the tower lights was made.

(3) In the event of any observed failure of a tower light:

(i) Nature of such failure.

(ii) Date, time, and nature of the adjustments, repairs, or replacements made.

(iii) Date and time the failure was observed.

(iv) Identification of Airways Communication Station (Civil Aeronautics Administration) notified of the failure of any code or rotating beacon light not corrected within thirty minutes, and the date and time such notice was given.

(v) Date and time notice was given to the Airways Communication Station (Civil Aeronautics Administration) that the required illumination was resumed.

(4) Upon completion of the periodic inspection required at least once each three months:

(i) The date of the inspection and the condition of all tower lights and associated lighting control devices.

(ii) Any adjustments, replacements, or repairs made to insure compliance with the lighting requirements and the date such adjustments, replacements, or repairs were made.

§ 5.164 *Form of station records.* (a) The records shall be kept in an orderly manner, in suitable form, and in such detail that the data required are readily available. Key letters or abbreviations may be used if proper meaning or explanation is set forth in the record.

(b) Each entry in the record shall be signed by a person qualified to do so, and having actual knowledge of the facts to be recorded.

(c) No record or portion thereof shall be erased, obliterated, or willfully destroyed within the required retention period. Any necessary correction may be made only by the persons originating the entry, who shall strike out the erroneous portion, initial the correction made, and indicate the date of correction.

§ 5.165 *Retention of station records.* Records required to be kept by these rules shall be retained by the licensee for a period of at least one year.

§ 5.166 *Adherence to program of research.* (a) The program of experimentation as stated by an applicant in its application for construction permit or license or in the station instrument of authorization, shall be substantially adhered to unless the licensee is authorized to do otherwise by the Commission.

(b) Where some phases of the experimental program are not covered by the general rules of the Commission or by the rules of this part, the Commission may specify supplemental or additional requirements or conditions in each case as deemed necessary in the public interest, convenience, or necessity.

SUBPART E—EXPERIMENTAL SERVICE (RESEARCH)

§ 5.201 *Eligibility for license.* Authorizations for stations in the Experimental Service (Research) will be issued only to persons qualified to conduct experimentations utilizing hertzian waves for scientific or technical radio research not related to an existing service or proposed service; or for communications in connection with research projects when existing communication facilities are inadequate.

§ 5.202 *Scope of services.* Stations operating in the Experimental Service (Research) will be permitted to conduct the following types of operations:

(a) Experimentations in scientific or technical radio research.

(b) Development of radio technique, equipment or engineering data not relating to an existing or proposed service.

(c) Experimentations under contractual agreement with the United States, or for export purposes.

(d) Communications essential to research projects.

§ 5.203 *Frequencies available for assignment to stations operating in the Experimental Service (Research).* (a) The following frequencies are available for assignment to this class of station: [1]

Kc.	*Kc.*
1614	9135
2398	12862.5
3492.5	17310
4797.5	23100

(b) In addition to the frequencies listed in paragraph (a) of this section, stations operating in the Experimental Service (Research) may be authorized to use any government or non-government frequency designated in the table of frequency allocation set forth in Part 2 of the Commission's rules as available for assignment to this service: *Provided,* That the need of the specific frequency(s) requested is fully justified by the applicant.

§ 5.204 *Additional showing required for stations involving contractual agreements.* (a) In the case of experimentations under contractual agreement with the United States if such operations involve non-government frequencies, the applicant shall submit a statement from the government agency concerned that:

[1] These frequencies may be subject to change when the Atlantic City Table of Frequency Allocations below 27.5 Mc. comes into force.

(1) The experimental program must be conducted on specific non-government frequencies.

(2) The proposed operation(s) is necessary in the interest of national defense.

(3) The specific frequency(s) requested is essential to the experimental program.

(4) Harmful interference will not be caused to the service of any station operating in accordance with the Table of Frequency Allocation in Part 2 of the Commission's rules.

(5) The contract number and the name of the agency concerned (security regulations permitting).

(6) The daily hours of operation and the estimated dates of the beginning and end of the specific time period for which the requested frequency is necessary.

(b) In the case of experimentations for the purpose of developing equipment for export purposes to be employed by stations under the jurisdiction of a foreign government, the applicant shall submit a statement that:

(1) The specific frequency(s) requested is essential to the developmental program;

(2) The contract number and the name of the foreign government concerned;

(3) The daily hours of operation and the estimated dates of the beginning and end of the specific time period for which the requested frequency is necessary.

§ 5.205 *Experimental report.* (a) A report on the results of the experimental program carried on under this subpart shall be filed with and made a part of each application for renewal of license: *Provided, however,* That the licensee shall, upon request, forward experimental reports at such times during the term of the station authorization as the Commission may deem necessary to evaluate the progress of the experimental program.

(b) An applicant may request that the Commission withhold from public information certain reports and associated material, and the Commission will so regard the same unless the public interest requires disclosures.

(c) The experimental report shall include comprehensive information on the following items in the order designated:

(1) Detailed analysis of the results obtained.

(2) Report on the research experimentation conducted.

(3) Total number of hours of operation on each frequency assigned.

(4) Copies of publications on the research program of experimentation.

(5) Any other pertinent information.

Provided, That, in the case of experimentations which are under contractual agreement with the United States, such reports shall include the above statements insofar as security regulations will permit.

SUBPART F—EXPERIMENTAL SERVICE (DEVELOPMENTAL)

§ 5.251 *Eligibility for license.* (a) Authorizations for stations in the Experimental Service (Developmental) will be issued only to persons qualified to conduct experimentations utilizing hertzian waves for the development of equipment, engineering or operational data, or techniques, directly related to an existing service or a proposed service.

(b) Applicants eligible for authorizations in an established service, and seeking to develop equipment or techniques directed toward the improvement of that service, shall conduct such projects under the developmental rules of the established service involved.

§ 5.252 *Scope of service.* Stations operating in the Experimental Service (Developmental) will be permitted to conduct the following types of operations:

(a) Development of radio technique, equipment, operational or engineering data related to an existing or proposed radio service.

(b) Field strength surveys or the demonstration of equipment by manufacturers to prospective purchasers for proposed stations in existing services. Transmission shall be limited to test messages essential to the installation, extension or development of an established radio communication facility and the procedure set forth in § 5.253 (c) shall apply.

(c) Technical demonstrations of equipment before a scientific meeting or convention.

§ 5.253 *Frequencies available for assignment to stations operating in the Experimental Service (Developmental).* (a) Applicants requesting authorizations for the development of existing services may be authorized to use any frequency designated in Part 2 of the Commission's rules as available for assignment to that service provided the proposed operation is in accordance with the rules governing that particular service.

(b) Applicants requesting authorizations for the development of a new service or for the use of frequencies not in accordance with the table of frequency allocations as set forth in Part 2 of the Commission's rules should select the frequency band in which it is desired to develop the program of experimentation. Specific frequency assignment may be made by the Commission in accordance with the procedure set forth in § 5.254.

(c) Applicants requesting authorization to conduct field strength surveys or equipment demonstrations over a broad geographical area may normally be granted an authorization without the designation of a specific frequency or frequencies. The licensee, when desiring to conduct a survey in a particular area, will request a specific frequency assignment for each individual survey following the procedure set forth below:

(1) The licensee of the station shall submit to the Commission prior to each specific survey, complete and detailed information, including

(i) Time, date and duration;

(ii) Frequency to be used;

(iii) Location of transmitter and geographical area to be covered;

(iv) Purpose of survey;

(v) Method and equipment to be used;

(vi) Names and addresses of the persons for whom the survey is conducted if other than the licensee of the experimental station together with a statement from that person indicating that such a survey has been requested.

(2) Upon receipt of authorization from the Commission, the licensee shall furnish the Engineer in Charge of the radio district in which the survey is to be conducted sufficiently in advance to assure receipt before the commencement thereof, the following information; time, date, duration, frequency, location of transmitter, area to be covered, and the purpose of the survey.

§ 5.254 *Special procedure for the development of a new service or for the use of frequencies not in accordance with the Table of Frequency Allocations.*

(a) An authorization for the development of a new service or for the use of frequencies not in accordance with the Table of Frequency Allocations will be granted only after the Commission has made a preliminary determination of the following factors as the case may require:

(1) That the public interest, convenience or necessity would be served by the establishment of the proposed service or by the use of the proposed frequency;

(2) That the importance of the proposed operation appears to warrant a change in the Table of Frequency Allocations.

(b) The Commission will follow such rule making procedure as may be appropriate before making a grant for the operation of a station under this section.

(c) Where circumstances require and permit, the Commission may authorize a grant of limited duration for the express and sole purpose of developing data which the Commission finds to be necessary to make the determination required under paragraphs (a) and (b) of this section. Such grants shall in no way be construed as a finding by the Commission with respect to the matters set forth in the aforementioned paragraphs or that the operation of any radio station thereunder will serve the public interest, convenience and necessity beyond the express terms of the particular grant. The terms of such grant, including frequency, power, emission, etc., will be specified in the instrument of authorization.

§ 5.255 *Experimental report.* (a) A report on the results of the experimental program carried on under this sub-part shall be filed with and made a part of each application for renewal of license: *Provided, however,* That the licensee shall, upon request, forward experimental reports at such time during the term of the station authorization as the Commission may deem necessary to evaluate the progress of the experimental program.

(b) An applicant may request that the Commission withhold from public information certain reports and associated material, and the Commission will so regard the same unless the public interest requires disclosures.

(c) The experimental report of stations operating in this service for the development of existing services shall include comprehensive information on the following items in the order designated:

(1) Detailed analysis of the results obtained.

(2) Report on the experimental work conducted.

(3) The total number of hours of operation on each frequency.

(4) Copies of any published reports on the program of experimentation.

(5) Any other pertinent information that may be of value to the Commission in evaluating the merits of the proposed operations.

(d) In addition to the information included in paragraph (c) of this section, the experimental report of a station authorized for the development of a new service shall include comprehensive information on the following items:

(1) Probable public support and methods of its determination.

(2) Practicability of service operations.

(3) Interference encountered.

(4) Pertinent information relative to merits of the proposed service.

(5) Propagation characteristics of frequencies used, particularly with respect to service objective.

(6) Frequencies believed to be more suitable and reasons therefor.

(7) Type of signals or communications employed in the experimental work.

[F. R. Doc. 50-6932; Filed, Aug. 7, 1950; 8:51 a. m.]

NOTICES

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Misc. 52908]

NEW MEXICO

ORDER PROVIDING FOR OPENING OF PUBLIC LANDS

JULY 31, 1950.

In an exchange of lands made under the provisions of section 8 of the act of June 28, 1934 (48 Stat. 1269), as amended June 26, 1936 (49 Stat. 1976, 43 U. S. C. sec. 315g), the following described lands have been reconveyed to the United States:

NEW MEXICO PRINCIPAL MERIDIAN

T. 4 S., R. 8 E.,
Sec. 13, W½E½,
T. 7 S., R. 11 W.,
Sec. 7, SW¼SE¼;
Sec. 20, N½N½,
T. 7 S., R. 12 W.,
Sec. 9;
Sec. 12,
T. 7 S., R. 13 W.,
Sec. 9, S½S½;
Sec. 10, SW¼SW¼;
Sec. 15, NW¼NW¼;
Sec. 21, W½E½, NE¼NW¼;
Sec. 22, N½NW¼, W½NE¼;
Sec. 28, NE¼NE¼,
T. 29 S., R. 20 W.,
Sec. 10, SW¼NW¼.

The areas described aggregate 2,320 acres.

The lands are primarily suitable for grazing.

No applications for these lands may be allowed under the homestead, small tract, desert-land, or any other nonmineral public-land laws, unless the lands have already been classified as valuable for such type of application, or shall be so classified upon consideration of an application.

This order shall not otherwise become effective to change the status of such lands until 10:00 a. m. on the 35th day after the date of this order. At that time the said lands shall, subject to valid existing rights and the provisions of existing withdrawals, become subject to application, petition, location, and selection as follows:

(a) *Ninety-one day period for preference-right filings.* For a period of 91 days, commencing at the hour and on the day specified above, the public lands affected by this order shall be subject only to (1) application under the homestead or the desert-land laws or the Small Tract Act of June 1, 1938, 52 Stat. 609 (43 U. S. C. 682a), as amended, by qualified veterans of World War II and other qualified persons entitled to preference under the act of September 27, 1944, 58 Stat. 747 (43 U. S. C. 279–284), as amended, subject to the requirements of applicable law, and (2) application under any applicable public-land law, based on prior existing valid settlement rights and preference rights conferred by existing laws or equitable claims subject to allowance and confirmation. Applications under subdivision (1) of this paragraph shall be subject to applications and claims of the classes described in subdivision (2) of this paragraph. All applications filed under this paragraph either at or before 10:00 a. m. on the 35th day after the date of this order shall be treated as though filed simultaneously at that time. All applications filed under this paragraph after 10:00 a. m. on the said 35th day shall be considered in the order of filing.

(b) *Date for non-preference-right filings.* Commencing at 10:00 a. m. on the 126th day after the date of this order, any lands remaining unappropriated shall become subject to such application, petition, location, selection, or other appropriation by the public generally as may be authorized by the public-land laws. All such applications filed either at or before 10:00 a. m. on the 126th day after the date of this order, shall be treated as though filed simultaneously at the hour specified on such 126th day. All applications filed thereafter shall be considered in the order of filing.

A veteran shall accompany his application with a complete photostatic, or other copy (both sides), of his certificate of honorable discharge, or of an official document of his branch of the service which shows clearly his honorable discharge as defined in § 181.36 of Title 43 of the Code of Federal Regulations, or constitutes evidence of other facts upon which the claim for preference is based and which shows clearly the period of service. Other persons claiming credit for service of veterans must furnish like proof in support of their claims. Persons asserting preference rights, through settlement or otherwise, and those having equitable claims, shall accompany their applications by duly corroborated statements in support thereof, setting forth in detail all facts relevant to their claims.

Applications for these lands, which shall be filed in the Land and Survey Office, Santa Fe, New Mexico, shall be acted upon in accordance with the regulations contained in § 295.8 of Title 43 of the Code of Federal Regulations and Part 296 of that title, to the extent that such regulations are applicable. Applications under the homestead laws shall be governed by the regulations contained in Parts 166 to 170, inclusive, of Title 43 of the Code of Federal Regulations, and applications under the desert-land laws and the said Small Tract Act of June 1, 1938, shall be governed by the regulations contained in Parts 232 and 257, respectively, of that title.

Inquiries concerning these lands shall be addressed to the Manager, Land and Survey Office, Santa Fe, New Mexico.

WILLIAM ZIMMERMAN, JR.,
Assistant Director.

[F. R. Doc. 50-6910; Filed, Aug. 7, 1950; 8:48 a. m.]

DEPARTMENT OF COMMERCE

Federal Maritime Board

MEMBER LINES OF NEW YORK FREIGHT BUREAU ET AL.

NOTICE OF AGREEMENTS FILED WITH BOARD FOR APPROVAL

Notice is hereby given that the following described agreements have been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916, as amended.

Agreement No. 5800–4, between the member lines of the New York Freight Bureau (Shanghai), modifies the basic agreement of said Bureau (No. 5800) to remove Formosa from its territorial scope and to clarify certain provisions of the basic agreement.

Agreement No. 5700–2, between the member lines of the New York Freight Bureau (Hong Kong), modifies the basic agreement of said Bureau (No. 5700) to include Formosa within its territorial scope and to clarify certain provisions of the basic agreement.

Agreement No. 4379–1, between the member lines of the New York Freight Bureau (Hong Kong) and the member lines of the Trans-Pacific Freight Conference (Hong Kong), modifies Agreement No. 4379 to include Formosa within its territorial scope and to clarify certain provisions.

Agreement No. 4292-3, between the member lines of the New York Freight Bureau (Shanghai) and the member lines of the Trans-Pacific Freight Conference of North China (Shanghai), modifies Agreement No. 4292 to remove Formosa from its territorial scope.

Interested parties may inspect these agreements and obtain copies thereof at the Regulation Office, Federal Maritime Board, Washington, D. C., and may submit, within 20 days after publication of this notice, written statements with reference to any of the agreements and their position as to approval, disapproval, or modification together with request for hearing should such hearing be desired.

Dated: August 2, 1950.

By order of the Federal Maritime Board.

[SEAL] A. J. WILLIAMS,
Secretary.

[F. R. Doc. 50-6922; Filed, Aug. 7, 1950; 8:50 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[Designation Order 48]

DESIGNATION OF MOTIONS COMMISSIONER FOR AUGUST 1950

At a session of the Federal Communications Commission held at its office in Washington, D. C., on the 26th day of July 1950:

It is ordered, Pursuant to section 0.111 of the Statement of Delegations of Authority, that Rosel H. Hyde, Commissioner, is hereby, designated as Motions Commissioner for the month of August 1950.

It is further ordered, That in the event said Motions Commissioner is unable to act during any part of said period the Chairman or Acting Chairman will designate a substitute Motions Commissioner.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-6924; Filed, Aug. 7, 1950; 8:50 a. m.]

[Docket No. 9747]

ATLANTIC BROADCASTING CO., INC. (WHOM)

ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In re application of Atlantic Broadcasting Company, Inc. (WHOM), Jersey City, New Jersey, Docket No. 9747, File No. BML-1413; for modification of license.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 26th day of July 1950.

The Commission having under consideration the above-entitled application requesting a modification of the license of Station WHOM authorizing the removal of its main studios from Jersey City, New Jersey to New York, New York; and

It appearing, that the applicant is legally, technically, financially, and otherwise qualified to operate Station WHOM as proposed, but that the operation of Station WHOM as proposed would fail to provide satisfactory service in accordance with the Commission's Standards of Good Engineering Practice to the city of New York, New York, that the removal of WHOM's main studios from Jersey City, New Jersey, would deprive that city of its only existing facility for the local origination of standard broadcast programs, and that for these reasons, among others, the Commission is unable to conclude that a grant of the above-entitled application would serve public interest, convenience, and necessity;

It is ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the above-entitled application is designated for hearing commencing at 10:00 a. m. January 17, 1951, at Jersey City, New Jersey, upon the following issues:

1. To determine the comparative needs of the cities of Jersey City, New Jersey, and New York, New York, for broadcast service originating in local studios, and, in view thereof, whether a grant of this application would be in accordance with section 307 (b) of the Communications Act of 1934, as amended.

2. To determine whether the operation of Station WHOM as proposed would be in compliance with the Commission's rules and regulations and Standards of Good Engineering Practice with particular reference to extent and quality of service which would be provided to the city of New York, New York.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-6925; Filed, Aug. 7, 1950; 8:50 a. m.]

[Docket No. 9105]

AIR WAVES, INC. (WJOC)

ORDER DESIGNATING APPLICATION FOR FURTHER HEARING ON STATED ISSUE

In re application of Air Waves, Incorporated (WJOC), Jamestown, New York, Docket No. 9105, File No. BP-6822; for construction permit.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 26th day of July 1950;

The Commission having under consideration (1) the record herein; (2) the Examiner's Initial Decision in this proceeding, released February 24, 1950; and (3) a Petition to Reopen Record, Accept Supplemental Evidence, and Close Record without Further Hearing, filed on July 3, 1950, by Air Waves, Incorporated, licensee of Station WJOC, Jamestown, New York, applicant herein; and

It appearing, that WJOC now operates on the frequency of 1470 kc., daytime only, with 1 kw. power; that in the above-entitled application it requests authority to operate on 1340 kc. with 250 watts power, unlimited time; that following hearings held on the said application the Examiner issued an Initial Decision looking to the grant thereof; that exceptions were timely filed thereto by the General Counsel of the Commission; and

It further appearing, that from evidence developed at the hearing on the application it appeared that the proposed operation would cause daytime co-channel interference to Station CKOX, Woodstock, Ontario, Canada, based upon calculations employing soil map conductivities as set forth in the Commission's and Canadian soil maps; and

It further appearing, that the Examiner in his Initial Decision found that "On the basis of conductivities as shown in the Commission's ground conductivity map, Station WJOC, operating as proposed, would cause some interference to Station CKOX but the entire area of interference to CKOX is already suffering interference from Station WIKK, operating at Erie, Pennsylvania, on 1330 kc. * * *"; and

It further appearing, That in its above-mentioned petition the applicant states that as it was "of the opinion that its original estimates regarding the conductivity in the Jamestown area in the direction of Canada were substantially correct, it proceeded to take measurements on a radial from Jamestown to Woodstock, Ontario, Canada, to ascertain the conductivity within the United States from Jamestown in the direction of Woodstock, Ontario, Canada."; that such measurements and the analysis thereof "show that the conductivity within the United States is lower than that shown on the Commission's soil maps, and that using the measured conductivity plus the map conductivity shown for Lake Erie and that portion of Canada over which the signal would traverse, * * * no interference of any nature would be caused to CKOX."; and that the applicant requests that without further hearing the record be reopened for the purpose of admitting the measurements and analysis referred to above, attached to the petition and designated as Exhibit No. 29; and

It further appearing, That in view of the foregoing circumstances, the record should show whether interference would be caused to Station CKOX from the proposed operation of Station WJOC, based upon the measurements contained in Exhibit No. 29 attached to the above-described petition; but that a determination of such question should be made on the basis of evidence received at a hearing rather than on the basis of ex parte affidavits, statements, and calculations as proposed by the applicant;

It is ordered, That in so far as the above-described petition of Air Waves, Incorporated, requests that the record in this proceeding be reopened and the measurements and analysis thereof, identified as Exhibit No. 29, be accepted in evidence, and the record closed without further hearing, the said petition is denied; but in so far as it requests reopening of the record, the said petition is granted; the Initial Decision herein,

released on February 24, 1950, is vacated and set aside; the record is reopened and the proceeding is remanded to the Examiner previously appointed for further hearing upon the following issue:

1. To determine, on the basis of measurements taken by the applicant and attached to the above-described petition and identified as Exhibit No. 29, whether the operation of Station WJOC as proposed would cause objectionable interference to Station CKOX, Woodstock, Ontario, Canada, and if so, the nature and extent thereof.

Released: July 28, 1950.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-6926; Filed, Aug. 7, 1950; 8:50 a. m.]

[Docket Nos. 9439, 9611]

FRANCIS DAVID BURGESS ET AL.

ORDER CONTINUING HEARING

In re applications of Francis David Burgess, Robert Olin Lowery, Francis J. Burgess, Allan S. Heard, Walker B. Jones and R. F. McCasland, d/b as Tul'e Broadcasting Co., Tulia, Texas, Docket No. 9439, File No. BP-7276; West Texas Broadcasters, Inc., Floydada, Texas, Docket No. 9611, File No. BP-7222; for construction permits.

The Commission having under consideration a petition filed July 28, 1950, by the Tul'e Broadcasting Co., Tulia, Texas, requesting a continuance of the hearing herein (presently scheduled for August 1, 1950, in Washington, D. C.) for a period of thirty days, in order to provide petitioner time to file a petition to dismiss, the completion of which has been delayed pending receipt of an affidavit of no consideration; and

It appearing that West Texas Broadcasters, Inc., Floydada, Texas, has consented to action upon this petition and a grant thereof prior to the expiration of the four-day period, as set forth in § 1.745 of the Commission's rules, that the General Counsel has also agreed to immediate action upon this petition, and that there are no other parties to this proceeding;

It is therefore ordered, This 31st day of July 1950 that the petition be and it is hereby granted and the hearing herein is hereby continued to September 5, 1950, at 10:00 a. m., in Washington, D. C.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-6928; Filed, Aug. 7, 1950; 8:50 a. m.]

[Docket No. 9157]

FORT INDUSTRY CO. (WSPD)

ORDER AMENDING ISSUE

In the matter of the petition of The Fort Industry Company (WSPD), for designation for hearing of Northeastern Indiana Broadcasting Company, Inc. (WKJG), Docket No. 9157; for modification of construction permit (File No. BMP-3332).

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 1st day of August 1950;

The Commission having under consideration a petition filed July 21, 1950, by The Northeastern Indiana Broadcasting Company, Inc. (WKJG) requesting the Commission to enlarge the issue in the above-entitled proceeding so as to permit the introduction of testimony relating to the operation of Station WKJG as indicated by its proof of performance which was filed with the Commission on August 23, 1949; and

It appearing, that the Commission is, among other things, interested in the effect the actual operation of Station WKJG would have upon the operation of Station WSPD; and that, therefore, the issue in this proceeding should be designed to allow such a showing;

It is ordered, That the petition is granted; and that the issue in the Commission's order of October 27, 1948, designating the above-entitled matter for hearing is amended to read as follows: To determine whether the operation of the proposed station at Fort Wayne, Indiana (WKJG), under the original construction permit would involve objectionable interference with WSPD, Toledo, Ohio, and whether the operation of Station WKJG under the modification application as reflected by the proof of performance submitted to the Commission on or about August 23, 1949, would involve an increase of interference, if any, with Station WSPD, Toledo, Ohio, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-6929; Filed, Aug. 7, 1950; 8:51 a. m.]

[Docket No. 9634]

MIDWEST BROADCASTING CORP.

ORDER CONTINUING HEARING

In the matter of Midwest Broadcasting Corporation, Montevideo, Minn., Docket No. 9634, File No. BP-7458; applicant for construction permit for a new standard broadcasting station.

The Commission having under consideration a petition filed July 28, 1950, by the applicant, Midwest Broadcasting Corporation, requesting a continuance of the hearing which is now scheduled for Wednesday, August 2, 1950, because the business obligations of applicant's counsel preclude his appearing at the appointed time and place of hearing; and

It appearing, that counsel for the Commission and counsel for the respondent, Times Publishing Company, St. Cloud, Minn., have informally consented to waive the time of filing requirements of § 1.745 of the rules and to a grant of the petition for continuance; and

It further appearing, that applicant's counsel has encountered unexpected conflicting business obligations and is unable in the time available to delegate responsibility for representation of this applicant at the hearing as now scheduled, and that good cause for continuance is thus shown, and that a grant of the petition therefor will conduce to the proper dispatch of the Commission's business and the ends of justice; now therefore,

It is ordered, This 1st day of August 1950, that the petition for continuance be, and it is hereby, granted, and the hearing upon the Midwest Broadcasting Corporation application, presently scheduled to commence on August 2, 1950, is continued until 10 o'clock a. m., on Wednesday, September 13, 1950.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-6930; Filed, Aug. 7, 1950; 8:51 a. m.]

FEDERAL POWER COMMISSION

[Project No. 1972]

DUANE H. CURRY

NOTICE OF ORDER

AUGUST 2, 1950.

Notice is hereby given that, on August 2, 1950, the Federal Power Commission issued its order entered August 1, 1950, authorizing amendment of license (minor) in the above-designated matter.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 50-6911; Filed, Aug. 7, 1950; 8:48 a. m.]

[Docket No. G-1277]

TRANSCONTINENTAL GAS PIPE LINE CORP.

NOTICE OF ORDER

AUGUST 2, 1950.

Notice is hereby given that, on August 2, 1950, the Federal Power Commission issued its order entered August 1, 1950, supplementing order of April 28, 1950, published in the FEDERAL REGISTER on May 6, 1950 (15 F. R. 2695), issuing certificate of public convenience and necessity in the above-designated matter.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 50-6912; Filed, Aug. 7, 1950; 8:48 a. m.]

[Docket No. G-146]

INTERSTATE NATURAL GAS CO., INC., AND HOPE PRODUCING CO.

NOTICE OF ORDER

AUGUST 2, 1950.

Notice is hereby given that, on August 1, 1950, the Federal Power Commission

issued its order entered August 1, 1950, terminating proceeding relating to rate suspension in the above-designated matter.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 50-6913; Filed, Aug. 7, 1950; 8:48 a. m.]

[Docket No. IT-6093]

HOMESTAKE MINING CO.

NOTICE OF ORDER

AUGUST 2, 1950.

Notice is hereby given that, on August 1, 1950, the Federal Power Commission issued its order entered August 1, 1950, in the above-designated matter, authorizing maintenance of permanent interconnection for emergency use only.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 50-6914; Filed, Aug. 7, 1950; 8:48 a. m.]

NATIONAL LABOR RELATIONS BOARD

GENERAL COUNSEL

AMENDMENT OF DELEGATION OF CERTAIN POWERS

Pursuant to the provisions of section 3 (a) of the Administrative Procedure Act (Pub. Law 404, 79th Cong., 2d sess.), the National Labor Relations Board hereby separately states and currently publishes in the FEDERAL REGISTER the following Amendments to the Statement of Delegation of Certain Powers of the National Labor Relations Board to the General Counsel of the National Labor Relations Board.[1]

Dated, Washington, D. C., August 3, 1950.

By direction of the Board.

FRANK M. KLEILER,
Executive Secretary.

The Statement of Delegation of Certain Powers of the National Labor Relations Board to the General Counsel of the National Labor Relations Board, effective August 22, 1947, as amended February 23, 1950, is hereby further amended in the following aspects:

Paragraph VII entitled *Personnel* is amended to read as follows:

VII. *Personnel.* In order better to ensure the effective exercise of the duties and responsibilities described above, the General Counsel of the Board, subject to applicable laws and the rules and regulations of Civil Service Commission, is delegated full and final authority on behalf of the Board over the selection, retention, transfer, promotion, demotion, discipline, discharge and in all other respects, of all personnel engaged in the field and in the Washington Office (other than Trial Examiners, Legal Assistants to Board Members, the personnel in the Information Division, the personnel in the Division of Administration—excluding the Affidavit Compliance Branch—the Solicitor of the Board and personnel in his office, the Executive Secretary of the Board and personnel in his office, including the Order Section and personnel engaged in assisting the Executive Secretary in carrying out his duties, and secretarial, stenographic and clerical employees assigned exclusively to the work of the Members and the Office of the Executive Secretary): *Provided, however,* That no appointment, transfer, demotion or discharge of any Regional Director, or of any Officer in Charge of a Subregional Office, shall become effective except upon approval by the Board. In order to effectuate the exercise of the powers herein delegated (but not with respect to those powers herein reserved to the Board), the General Counsel is authorized, using the services of the Division of Administration, to execute such necessary requests, certifications, and other related documents on behalf of the Board, as may be needed from time to time to meet the requirements of Civil Service Commission, the Bureau of the Budget, or any other Governmental Agency.

The Board will provide such of the "housekeeping" functions performed by the Division of Administration as are requested by the General Counsel in the conduct of his administrative business at all times so as to meet the stated requirements of the General Counsel within his statutory and delegated functions.

The establishment, transfer or elimination of any Regional or Subregional Office shall require the approval of the Board.

[F. R. Doc. 50-6934; Filed, Aug. 7, 1950; 8:51 a. m.]

[1] This amends Statements of General Policy or Interpretation which appeared at 13 F. R. 654 and the Amended Statement appearing at 15 F. R. 1083.

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 172]

WATER CARRIER SERVICE ON THE GREAT LAKES WITH NONOWNED VESSELS

ORDER ASSIGNING HEARING

At a session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 28th day of July A. D. 1950.

Sections 304 (a) and (b), 309 (a), and 313 (a), (b) and (f) of the Interstate Commerce Act being under consideration; and good cause appearing therefor:

It is ordered, That an investigation be, and it is hereby, instituted by the Commission, Division 4, on its own motion, into the lawfulness of the practice of transporting automobiles, in interstate or foreign commerce, purportedly in the service of T. J. McCarthy Steamship Company and Nicholson Transit Company, between ports on the Great Lakes on vessels owned by others, with a view to determining whether such operations constitute transportation by those carriers or, instead, transportation by the respective vessel owners, and of entering such order or taking such other action in the premises as the facts and circumstances shall appear to warrant.

It is further ordered, That T. J. McCarthy Steamship Company, Nicholson Transit Company, Midland Steamship Line, Inc., Jones & Laughlin Steel Corporation, Johnson Transportation Company, T. H. Browning Steamship Company, Boland & Cornelius, Managers, and The Kinsman Transit Co. be, and they are hereby, made respondents to this proceeding.

And it is further ordered, That the proceeding be assigned for hearing at such times and places as may hereafter be designated.

By the Commission, Division 4.

[SEAL] W. P. BARTEL,
Secretary.

[F. R. Doc. 50-6915; Filed, Aug. 7, 1950; 8:48 a. m.]

[4th Sec. Application 25296]

PHOSPHATE ROCK FROM FLORIDA TO GULFPORT, MISS.

APPLICATION FOR RELIEF

AUGUST 3, 1950.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: R. E. Boyle, Jr., Agent, for and on behalf of carriers parties to ACL., and SAL., tariffs I. C. C. Nos. B-3232 and A-8153, respectively.

Commodities involved: Phosphate rock, carloads.

From: Points in Florida.

To: Gulfport, Miss.

Grounds for relief: Competition with water-rail carriers.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission, Division 2.

[SEAL] W. P. BARTEL,
Secretary.

[F. R. Doc. 50-6916; Filed, Aug. 7, 1950; 8:48 a. m.]

[4th Sec. Application 25297]

PETROLEUM PRODUCTS BETWEEN SOUTHWESTERN TERRITORY AND ADJACENT POINTS

APPLICATION FOR RELIEF

AUGUST 3, 1950.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: D. Q. Marsh, Agent, for and on behalf of carriers parties to the tariffs named below.

Commodities involved: Petroleum products, tank-car loads.

From, to, and between points in southwestern territory, southern Missouri, Kansas and adjacent points.

Grounds for relief: Circuitous routes, competition with motor carriers and to apply over short tariff routes rates constructed on the basis of the short line distance formula.

Schedules filed containing proposed rates: D. Q. Marsh's tariffs I. C. C. Nos. 3585, 3821, 3642, 3793 and 3723, Supplements 419, 49, 54, 29 and 125, respectively, and L. E. Kipp's tariff I. C. C. No. A-3578, Supplement 55.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission, Division 2.

[SEAL] W. P. BARTEL, *Secretary.*

[F. R. Doc. 50-6917; Filed, Aug. 7, 1950; 8:48 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 70-2410]

CHARLES C. HARRISON, 3D, ET AL.

ORDER GRANTING APPLICATION

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 31st day of July A. D. 1950.

In the matter of Charles C. Harrison, 3d, David B. Sharp, Jr., Robert E. Daffron, Jr., File No. 70-2410.

Charles C. Harrison, 3d, David B. Sharp, Jr., and Robert E. Daffron, Jr. have filed a joint application pursuant to the Public Utility Holding Company Act of 1935, particularly sections 9 (a) (2) and 10 thereof, with respect to the following proposed transactions:

Chesapeake Utilities Corporation ("Chesapeake") is a holding company claiming exemption as such pursuant to the provisions of Rule U-9 of the general rules and regulations promulgated under the act. Harrison, Sharp and Daffron, jointly, hold 13,000 shares of common stock of Chesapeake of the par value of $5 per share out of 26,000 shares of such stock outstanding, and hold indirectly, through Harrison & Co., in which they are partners, 50 shares of 5 percent Cumulative Preferred Stock of Chesapeake of the par value of $100 per share of which 1,000 shares are outstanding. Mary Callery owns 950 shares of the preferred and 11,000 shares of the common stocks of Chesapeake. Harrison, Sharp and Daffron propose to acquire from Mary Callery an indirect interest, through Harrison & Co., in an additional 50 shares of the preferred stock of Chesapeake, the initial 50 shares having been acquired from Mary Callery pursuant to an order of this Commission dated February 13, 1950. Harrison & Co. will pay Mary Callery a cash consideration of $5,000, being the aggregate par value of such stock and the cost of such shares to her.

The application states that the proposed transactions are not subject to the jurisdiction of any State commission nor of any Federal agency other than this Commission.

Notice of said filing having been duly given in the form and manner prescribed by Rule U-123 promulgated under the act, and the Commission not having received a request for hearing within the time specified in said notice, or otherwise, and the Commission not having ordered a hearing thereon; and

The Commission finding with respect to said application that the requirements of the applicable provisions of the act and the rules thereunder are satisfied and deeming it appropriate in the public interest and in the interest of investors and consumers that said application be granted, and further deeming it appropriate to grant the request of the applicants that the order become effective as soon as possible:

It is ordered, Pursuant to Rule U-23 and the applicable provisions of the act, and subject to the terms and conditions prescribed in Rule U-24, that said application be, and the same hereby is, granted forthwith.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 50-6903; Filed, Aug. 7, 1950; 8:48 a. m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

AUTHORITY: 40 Stat. 411, 55 Stat. 839, Pub. Laws 322, 671, 79th Cong., 60 Stat. 50, 925; 50 U. S. C. and Supp. App. 1, 616; E. O. 9193, July 6, 1942, 3 CFR, Cum. Supp., E. O. 9567, June 8, 1945, 3 CFR, 1945 Supp., E. O. 9788, Oct. 14, 1946, 11 F. R. 11981.

[Vesting Order 14887]

KAROLINE E. RUECKERT ET AL.

In re: Stock owned by Karoline E. Rueckert, Katharina Kessel, and the personal representatives, heirs, next of kin, legatees and distributees of Katharina Satoria, deceased. F-28-30772-D-1, F-28-30773-D-1, F-28-30774-D-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Karoline E. Rueckert, whose last known address is 16/0 Werdenfelsstrasse, Munich 25, Germany, and Katharina Kessel, whose last known address is Kloster Wildburg, Vallender am. Rhein, bei Koblenz, Germany, are residents of Germany and nationals of a designated enemy country (Germany);

2. That the personal representatives, heirs, next of kin, legatees and distributees of Katharina Satori, deceased, who there is reasonable cause to believe are residents of Germany, are nationals of a designated enemy country (Germany);

3. That the property described as follows: One hundred and twenty (120) shares of the capital stock of Faust-Weber Corporation (in liquidation), a corporation organized under the laws of the State of New York, evidenced by certificate numbered 4, registered in the name of Charles A. Weber as Attorney-in-fact for Karoline E. Rueckert, together with all declared and unpaid dividends thereon, and any and all rights in and to the proceeds of liquidation of the aforesaid Corporation,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by Karoline E. Rueckert, the aforesaid national of a designated enemy country (Germany);

4. That the property described as follows: One hundred and twenty (120) shares of the capital stock of Faust-Weber Corporation (in liquidation), a corporation organized under the laws of the State of New York, evidenced by a certificate or certificates, registered in the name of Charles A. Weber as Attorney-in-fact for Katharina Kessel, together with all declared and unpaid dividends thereon, and any and all rights in and to the proceeds of liquidation of the aforesaid Corporation,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, Katharina Kessel, the aforesaid national of a designated enemy country (Germany);

5. That the property described as follows: One hundred and twenty (120) shares of the capital stock of Faust-Weber Corporation (in liquidation), a corporation organized under the laws of the State of New York, evidenced by a certificate or certificates, registered in the name of Charles A. Weber as Attor-

ney-in-fact for Katharina Satori, together with all declared and unpaid dividends thereon, and any and all rights in and to the proceeds of liquidation of the aforesaid Corporation,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the personal representatives, heirs, next of kin, legatees and distributees of Katharina Satori, deceased, the aforesaid nationals of a designated enemy country (Germany);

and it is hereby determined:

6. That to the extent that the persons named in subparagraph 1 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany);

7. That to the extent that the personal representatives, heirs, next of kin, legatees and distributees of Katharina Satori, deceased, referred to in subparagraph 2 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on July 17, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Acting Director,
Office of Alien Property.

[F. R. Doc. 50-6936; Filed, Aug. 7, 1950; 8:51 a. m.]